

ARTICLE 7
NATURAL RESOURCES

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DIVISION I: FLOODPLAIN MANAGEMENT**SUBTITLE 1
DEFINITIONS; GENERAL PROVISIONS****§ 1-1. Definitions.****(a) *Accessory/appurtenant structure.***

“Accessory/appurtenant structure” means a structure which:

- (1) is on the same parcel of property as the principal structure;
- (2) is no greater than 300 square feet and 1 story; and
- (3) the use of which is incidental to the use of the principal structure.

(b) *Base flood.*

“Base flood” means the 100-year frequency flood event (as indicated in the Flood Insurance Study, as amended) the elevation of which is used for regulatory purposes in this Division I.

(c) *Basement.*

“Basement” means any area of a building having its floor subgrade (below ground level) on all sides.

(d) *Break away wall.*

(1) “Break away wall” means a wall that:

- (i) is not part of the structural support of the building; and
 - (ii) is intended through its design and construction to collapse under specific lateral loading forces, without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.
- (2) For the purposes of this definition, a break away wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Such enclosed space shall be no lower than grade and shall be usable solely for parking of vehicles, building access, or storage. If a separate storage area is provided at grade, such area shall not exceed 300 square feet.
- (3) Break away walls which exceed the above stated safe loading resistance may be permitted only if a registered professional engineer or architect certifies that the wall shall collapse under a force less than that exerted by a 100-year storm in this region without jeopardizing the structural integrity of the supporting foundation. When the design safe loading resistance exceeds 20 pounds per square foot, but is certified to collapse under a force less than that

exerted by the 100-year storm, the designed resistance must be stated clearly and certified independently on the building plans.

- (4) The 100-year storm means the storm which causes that level of flooding, water loads, wind speeds, duration, direction and forces which, when acting simultaneously, result in severe beach erosion and overwash and have a 1% chance of occurring each year.

(e) *Development.*

- (1) “Development” means any man-made change to improved or unimproved real estate, including but not limited to any construction, reconstruction, modification, extension, or expansion of buildings or other structures, placement of fill or concrete, construction of new or replacement infrastructure, dumping, mining, dredging, grading, paving, drilling operations, storage of materials, land excavation, land clearing, land improvement, land fill operation, or any combination thereof.

- (2) This term shall also include the subdivision of land.

(f) *Elevation certificate.*

“Elevation certificate” means the official form as prepared and distributed by the Federal Emergency Management Agency using Mean Sea Level as established by the National Geodetic Vertical Datum of 1929 (“NGVD” hereinafter).

(g) *Flood.*

“Flood” means a temporary inundation of normally dry land areas.

(h) *Flood Insurance Rate Map (FIRM).*

“Flood Insurance Rate Map (FIRM)” means a map which depicts the minimum special flood hazard area to be regulated by this Division I.

(i) *Flood Insurance Study.*

“Flood Insurance Study” means an analysis of hydrologic and hydraulic conditions in streams and tributaries used to determine flood elevations and frequency.

(j) *Flood protection elevation (FPE).*

“Flood protection elevation (FPE)” means the elevation of the base flood plus 1 foot freeboard.

(k) *Floodplain.*

“Floodplain” means

- (1) a relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation;
- (2) an area subject to the unusual and rapid accumulation or runoff of surface waters from any source; or
- (3) an area subject to tidal surge or extreme tides.

(l) *Floodproofing.*

“Floodproofing” means any combination of structural and non-structural additions, changes, or adjustments of properties and structures which reduce or eliminate flood damage to lands, water, and sanitary facilities, structures, and contents of buildings.

(m) *Floodproofing certificate.*

“Floodproofing certificate” means the form supplied by FEMA to certify that a building has been designed and constructed to be structurally floodproofed to the flood protection elevation.

(n) *Freeboard.*

“Freeboard” means an increment of elevation added to the base flood elevation to provide a factor of safety for uncertainties in calculations, wave actions, subsidence, or other unpredictable effects.

(o) *Historic structure.*

“Historic structure” means a structure listed individually on the National Register of Historic Places, the Maryland Inventory of Historic Properties, a local inventory of historic places certified by the Maryland Historic Trust or the Secretary of the Interior, or preliminarily determined as meeting the requirements for such listing by the Maryland Historic Trust or the Secretary of the Interior, or determined as contribution to the historic significance of a historic district registered with the Secretary of the Interior.

(p) *Lowest floor.*

- (1) “Lowest floor” means the lowest floor of the lowest enclosed area (including basement).
- (2) An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of the Federal Emergency Management Agency, National Flood Insurance Program.

(q) *Manufactured home or building.*

- (1) “Manufactured home or building” means a structure, transportable in 1 or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities.

- (2) For floodplain management purposes, the term “manufactured home or building” also includes park trailers, travel trailers, and other similar vehicles placed on a site for more than 180 consecutive days.

(r) *Manufactured home park or subdivision.*

“Manufactured home park or subdivision” means a parcel or contiguous parcels of land divided into 2 or more manufactured home lots for rent or sale.

(s) *New construction.*

- (1) “New construction” means structures for which a building permit has been issued on or after December 22, 1988, so long as actual construction commences within 360 days of the permit date.
- (2) The actual start of construction means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.
- (3) Permanent construction does not include land preparation such as clearing, grading, and filling, the installation of streets and/or walkways, excavation for basements, footings, piers, foundations, or the erection of temporary forms or the installation on the property of accessory buildings.

(t) *Non-conforming structures.*

“Non-conforming structures” means any lawfully existing building or structure which does not comply with the applicable floodplain regulations of the subdistrict in which it is located.

(u) *Occupancy permit.*

“Occupancy permit” means an approved building permit which contains all required authorizations signifying compliance with City codes and which indicates official approval of a building or structure for its authorized use.

(v) *100-year flood.*

“100-year flood” means a flood that has 1 chance in 100 or a 1% chance of being equalled or exceeded in any given year.

(w) *Principally above ground.*

“Principally above ground” means a structure with at least 51% of the fair market value of the structure, less land value, above ground.

(x) *Start of construction.*

- (1) “Start of construction” means the date of issue of the building permit for any development, including new construction and substantial improvements, provided that the actual start of the construction or improvement was within 180 days of permit issuance.
- (2) The actual start of construction is the placement of slab or footings, piles, columns.

(y) *Structure.*

“Structure” means a walled and/or roofed building, including, but not limited to, a gas or liquid storage tank, a building foundation, platform, deck, swimming pool, bulkhead, or greenhouse that is principally above ground and affixed to a permanent site or location.

(z) *Subdivision.*

“Subdivision” means the division or redivision of lots, tracts, or parcels of land by any means into 2 or more lots, tracts, parcels, or other divisions of land, including a change in existing lot lines for the purpose, whether immediate or future, of lease, transfer of ownership, building, or lot development.

(aa) *Substantial damage.*

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

(bb) *Substantial improvement.*

- (1) “Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the fair market value of the structure either:
 - (i) before the improvement or repair is started; or
 - (ii) if the structure has been damaged or substantially damaged and is being restored, before the damage occurred.
- (2) For the purpose of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.
- (3) The term does not, however, include either:
 - (i) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or

- (ii) any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places or the City Landmark List, provided that the alteration will not preclude the structure's continued designation on these lists.

(cc) *Temporary development.*

“Temporary development” means any building, construction, and/or assemblage of structures, such as construction sheds, seats, canopies, tents, and fences used in construction work or for temporary purposes, such as reviewing stands, fairs, carnivals, or flea markets, which are completely removed upon the expiration of 180 days or less as stated in the permit.

(dd) *Temporary structure.*

“Temporary structure” means any structure completely removed within 360 days from issuance of the permit.

(ee) *Variance.*

“Variance” means the grant of relief from the terms of this Division I.

(ff) *Wetland.*

“Wetland” means any land which is:

- (1) considered “private wetland” or “State wetland” pursuant to Title 9 {“Wetlands and Riparian Rights”} of the State Natural Resources Article; or

- (2) defined as “wetland” by the U. S. Fish and Wildlife Service Identification and Classification Procedures.

(City Code, 1976/83, art. 7, §3.) (Ord. 88-188; Ord. 92-134.)

§ 1-2. Findings, intent, and design.

(a) *Findings.*

- (1) Certain areas of Baltimore City are subject to periodic inundation which results in loss of life and property, risks to health and safety, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief.
- (2) Flood losses and associated losses are created by structures inappropriately located, inadequately elevated, or otherwise unprotected and vulnerable to floods or erosion or by development which increases flood or erosion damage to other lands or development.
- (3) The biological values of floodplains, particularly tidal and non-tidal wetlands, can be adversely affected by floodplain development.
- (4) Baltimore City has the responsibility under the Flood Hazard Management Act of 1976, Title 5, Subtitle 8 of the State Environment Article, to control floodplain development in order to

protect persons and property from danger and destruction and to preserve the biological values and environmental quality of the watersheds or portions thereof under its jurisdiction.

- (5) Baltimore City has the responsibility under the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended, to adopt and enforce floodplain management regulations which meet the requirements of 44 Code of Federal Regulations Parts 55-77 et seq., in order to participate in the National Flood Insurance Program and remain eligible for federally subsidized flood insurance, federal disaster relief, and federal and state financial assistance.

(b) *Intent.*

It is, therefore, the intent of the Mayor and City Council by this Division I:

- (1) to protect human life and health;
- (2) to minimize public and private property damage;
- (3) to encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future;
- (4) to protect individuals from unwittingly buying lands and structures which are unsuited for intended purposes because of the flood hazards;
- (5) to protect water supply, sanitary sewage disposal, and natural drainage;
- (6) to reduce financial burdens imposed on the community, its governmental units, and its residents by preventing the unwise design and construction of development in areas subject to flooding;
- (7) to provide for public awareness of the flooding potential; and
- (8) to provide for the biological and environmental quality of the watersheds or portions thereof located in Baltimore City.

(c) *Design.*

The provisions of this Division I provide a unified comprehensive approach to floodplain management which addresses requirements of the federal and state programs concerned with floodplain management, namely:

- (1) the National Flood Insurance Program and the President's Executive Order 11988 of May 27, 1977, on floodplain management;
- (2) the State Waterway Construction Permit Program;
- (3) the State Wetlands Permit Program;

(4) the U.S. Army Corps of Engineers' Section 10 and Section 404 Permit Programs; and

(5) the State Coastal Zone Management Program.

(City Code, 1976/83, art. 7, §2.) (Ord. 88-188.)

§ 1-3. Interpretation.

(a) In general.

In their interpretation and application, the provisions of this Division I shall be:

(1) considered as minimum requirements;

(2) liberally construed in favor of proper flood hazard management and Baltimore City; and

(3) deemed neither to limit nor repeal any other powers granted under the Annotated Code of Maryland.

(b) Dispute resolution.

Should a dispute arise concerning the interpretation of this Division I, the counsel of the Federal Emergency Management Agency, the Maryland Department of Natural Resources, or the Federal Emergency Management Agency, 44 Code of Federal Regulations, shall prevail.

(c) Conflicting provisions.

This Division I supersedes any other ordinance currently in effect in the floodplain district. However, any other ordinance shall remain in full force and effect to the extent that its provisions are more restrictive.

(d) Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this Division I should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Division I which shall remain in full force and effect, and for this purpose, the provisions of this Division I are hereby declared to be severable.

(City Code, 1976/83, art. 7, §§11, 12, 13.) (Ord. 88-188.)

§ 1-4. Short title.

This Division I shall hereafter be referred to as the "Baltimore City Floodplain Management Ordinance".

(City Code, 1976/83, art. 7, §1.) (Ord. 88-188.)

SUBTITLE 2
FLOODPLAIN DISTRICT

§ 2-1. Establishment of district.

(a) *City to establish.*

The City shall establish a floodplain district and an official floodplain map to include all areas subject to inundation by the waters of the 100-year flood.

(b) *Basis.*

- (1) The source of this delineation shall be at a minimum, data contained in the most recent flood insurance study for Baltimore City, and illustrated in the “Flood Insurance Rate and Flood Boundary Maps”. The Flood Insurance Rate Maps (FIRM) illustrate both the 100-year floodplain boundaries and the floodway boundaries.
- (2) The 100-year flood elevation, as determined in the Flood Insurance Study, is graphically delineated on the official floodplain maps. The graphic delineation should be used only as an approximate guide to actual field conditions. Where actual field surveyed elevations disagree with map boundaries, the surveys prevail in issuing permits.

(c) *District as overlay to zoning.*

The floodplain district and the official floodplain map are an overlay on any zoning districts in the City, as provided in the Zoning Ordinance of Baltimore City.
(City Code, 1976/83, art. 7, §4(a).) (Ord. 88-188; Ord. 92-134; Ord. 99-547.)

§ 2-2. Subdistricts.

(a) *In general.*

The floodplain district shall be comprised of the following subdistricts.

(b) *Floodway.*

Floodway (F1): that portion of the floodplain district required to carry and discharge the waters of the 100-year flood without increasing the water surface elevation at any point more than 1 foot above existing 100-year flood conditions.

(c) *Floodway Fringe.*

- (1) Floodway Fringe (Zone A with Base Flood Elevation (F2)): those portions of land within the floodplain district subject to inundation by the 100-year flood, lying beyond the floodway (where a floodway has been determined) or in areas where detailed study data, profiles, and 100-year flood elevations have been established.
- (2) The floodway fringe appears on the “Flood Boundary and Floodway Maps” and “Flood Insurance Rate Maps”.

(d) *Approximate Floodplain.*

- (1) Approximate Floodplain (F3): those portions of land within the floodplain district subject to inundation by the 100-year flood, where a detailed study has not been performed but where a 100-year floodplain boundary has been approximated. A 100-year flood elevation shall be established after consideration of any flood elevation and floodway data available from federal, state, or other sources.
- (2) The approximate floodplain appears on both the “Flood Insurance Rate Maps” and “Flood Boundary and Floodway Maps” and may appear on all panels as Zone A.

(e) *Coastal Floodplain.*

- (1) Coastal Floodplain (CFP): those portions of the floodplain district subject to coastal or tidal flooding by a 100-year flood, where detailed study data are available. These areas are flooded due to high tides, hurricanes, tropical storms, and steady onshore winds.
- (2) The coastal floodplain appears on the “Flood Insurance Rate Maps” as Zones A, AE, and A1 - A30.

(f) *Coastal High Hazard Area.*

- (1) Coastal High Hazard Area (CHHA): those portions of land within the floodplain district subject to inundation by coastal or tidal flooding with high velocity waters and wave action.
- (2) The coastal high hazard area appears on the “Flood Insurance Rate Maps” as Zone V, VE, and V1 - V30.

(g) *Shallow Floodplain.*

Shallow Floodplain (SFP): those portions of land within the floodplain district with 100-year flood depths from 1 to 2 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident.

(City Code, 1976/83, art. 7, §4(b).) (Ord. 88-188; Ord. 92-134.)

§ 2-3. Official maps.

(a) *Floodplain map.*

The official floodplain map shall be the most current “Flood Insurance Rate Maps” as prepared by the Federal Emergency Management Agency.

(b) *District and subdistrict lines.*

The official floodplain map which reflects the boundaries of the floodplain district and its subdistricts shall be prepared and maintained by the Department of Planning, and incorporated by reference herein as part of this Division I.

(City Code, 1976/83, art. 7, §4(c).) (Ord. 88-188; Ord. 92-134.)

§ 2-4. Changes to District.*(a) When authorized.*

The delineation of the floodplain district may be revised, amended, and modified by Baltimore City in compliance with the National Flood Insurance Program and the Maryland Department of Natural Resources, when:

(1) there are changes through natural or other causes to flood elevations and boundaries; and/or

(2) changes are indicated by detailed hydrologic and hydraulic information and studies.

(b) Notice of changes.

As soon as practicable, but not later than 6 months after the dates such information becomes available, the Department of Planning shall notify the Federal Insurance Administrator of the changes by submitting technical and scientific data in accordance with 44 Code of Federal Regulations, Part 65.

(c) Required state and federal approvals.

All such changes shall be subject to the review and approval of the Federal Emergency Management Agency and the Maryland Department of Natural Resources.

(City Code, 1976/83, art. 7, §4(d).) (Ord. 88-188.)

§ 2-5. Dispute resolution.*(a) Planning to make initial determination.*

Should a dispute concerning any floodplain district boundary arise, an initial determination shall be made by the Department of Planning.

(b) Appeal to FEMA.

(1) Any party aggrieved by this decision may appeal to the Federal Emergency Management Agency.

(2) The burden of proof is on the appellant.

(City Code, 1976/83, art. 7, §4(e).) (Ord. 88-188.)

§ 2-6. Unmapped streams.*(a) Minimum flood protection setback.*

In cases in which development is proposed in the vicinity of unmapped streams, which have no delineated 100-year floodplain, a minimum of 25-foot flood protection setback from the bank of the stream may be used.

(b) *State permits.*

State permits may be required and applicants are advised to seek a determination from the State Water Resources Administration.

(c) *Variances.*

Variance may be applied for under Subtitle 5 {"Floodplain Variances"}.
(*City Code, 1976/83, art. 7, §4(f.) (Ord. 92-134.)*)

**SUBTITLE 3
DEVELOPMENT REGULATIONS**

PART 1. IN GENERAL

§ 3-1. Scope of subtitle.

(a) *New construction and substantial improvements.*

In order to prevent excessive damage to buildings and structures, the following restrictions shall apply to all new construction and substantial improvements to existing structures occurring in the floodplain district.

(b) *Projects overlapping subdistricts or elevations.*

In the event a proposed building, structure, or substantial improvement is sited in 2 different subdistricts or in a subdistrict with 2 different 100-year flood elevations the most restrictive regulation and/or higher flood elevation shall prevail.

(City Code, 1976/83, art. 7, §5(intro).) (Ord. 88-188.)

PART 2. DISTRICTWIDE REGULATIONS

§ 3-2. In general.

In the entire floodplain district, the following regulations shall apply.

(City Code, 1976/83, art. 7, §5(a)(intro).) (Ord. 88-188.)

§ 3-3. Conformance to programs and plans.

(a) *Permit programs.*

Any development approved shall be in conformance with the requirements of the permit programs of:

- (1) the Maryland Department of Natural Resources, Water Resources Administration; and
- (2) the U.S. Army Corps of Engineers.

(b) *Management plans.*

Where flood control and watershed management plans exist, all development shall be consistent with such plans.

(City Code, 1976/83, art. 7, §5(a)(1), (2).) (Ord. 88-188.)

§ 3-4. Residential structures.**(a) *Elevation.***

- (1) All new or substantially improved residential structures, including manufactured homes, shall have the lowest floor elevated to at least 1 foot above the 100-year flood elevation.
- (2) The elevation of the lowest floor of the improvement shall be certified by a registered surveyor or professional engineer on the elevation certificate, after the lowest floor is in place.

(b) *Placement.*

All proposed structures must be placed on the lot so as to avoid location in the floodplain as much as possible.

(c) *Basements.*

Basements are not permitted.

(d) *Enclosures below protection elevation.*

Enclosures below the flood protection elevation must be constructed with water equalizing vents.

(e) *Expansions in nontidal floodplains.*

In nontidal floodplains, horizontal expansions which increase the footprint and that are less than substantial shall also have the lowest floor elevated to or above the flood protection elevation.

(f) *Less than substantial improvements in tidal floodplains.*

Improvements in tidal floodplains which are less than substantial shall be constructed to minimize damage during flooding or shall be elevated to the greatest extent possible.

(City Code, 1976/83, art. 7, §5(a)(3).) (Ord. 92-134.)

§ 3-5. Nonresidential structures.**(a) *In general.***

- (1) All new or substantially improved nonresidential structures shall either be elevated as set forth above for residential structures or shall be floodproofed.
- (2) Basements or the floodproofing option are prohibited for new nonresidential structures in nontidal floodplains.

(b) *Floodproofing option.*

- (1) Floodproofing designs for existing structures must insure that areas below the flood protection elevation are watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (2) If the floodproofing option is chosen, a floodproofing certificate must be completed by a registered professional engineer or architect who shall review the design and specifications and certify that the nonresidential structure will meet this standard.

(c) *Expansions in nontidal floodplains.*

Horizontal expansions in the nontidal floodplain which increase the footprint and that are less than substantial shall also have the lowest floor elevated to or above the flood protection elevation.

(City Code, 1976/83, art. 7, §5(a)(3-a).) (Ord. 92-134.)

§ 3-6. Less than substantial improvement.

(a) *In general.*

If the construction, reconstruction, and/or modification of any structure constitutes less than a substantial improvement:

- (1) the elevation of the lowest floor shall be at least 1 foot above the elevation of the 100-year flood; or
- (2) those parts of the improvement below the elevation of 1 foot above the 100-year flood shall be dry floodproofed as specified by the U.S. Army Corps of Engineers in its Publication EP 1165 2 314, entitled Flood-Proofing Regulations.

(b) *Exceptions.*

Routine maintenance and repairs shall be excepted.

(City Code, 1976/83, art. 7, §5(a)(4).) (Ord. 88-188.)

§ 3-7. Impacts on habitat.

All development shall be undertaken in a manner which minimizes adverse impacts on aquatic and terrestrial habitat and their related flora and fauna.

(City Code, 1976/83, art. 7, §5(a)(6).) (Ord. 88-188.)

§ 3-8. Design, anchoring, and materials.

All new construction and substantial improvements shall be:

- (1) designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure;
- (2) constructed and placed on the lot so as to offer the minimum obstruction to the flow and height of the flood water;
- (3) constructed with material and utility equipment resistant to flood damage; and
- (4) constructed by methods and practices that minimize flood damage.

(City Code, 1976/83, art. 7, §5(a)(7).) (Ord. 88-188.)

§ 3-9. Landscape design.

(a) *Ground cover.*

Adequate ground cover shall be provided for soil stabilization within the floodplain district.

(b) *Land contours and plant material.*

Design of land contours and choice of plant material shall direct surface runoff away from structures and shall not increase surface runoff onto neighboring properties.

(City Code, 1976/83, art. 7, §5(a)(8).) (Ord. 88-188.)

§ 3-10. Electric and plumbing systems.

(a) *Electric.*

- (1) All electric water heaters, electric furnaces, generators, heat pumps, air conditioners, and other permanent electrical installations shall be permitted only at or above 1 foot above the elevation of the 100-year flood.
- (2) No electrical distribution panels shall be permitted at an elevation less than 3 feet above the elevation of the 100-year flood.

(b) *Plumbing.*

Water heaters, furnaces, and other permanent mechanical installations shall be permitted only at or above 1 foot above the level of the 100-year flood.

(City Code, 1976/83, art. 7, §5(a)(9), (10).) (Ord. 88-188.)

§ 3-11. Storage.

Materials that are buoyant, flammable, explosive, or that in times of flooding could be injurious to human, animal, or plant life shall not be stored below 1 foot above the level of the 100-year flood.

(City Code, 1976/83, art. 7, §5(a)(11).) (Ord. 88-188.)

§ 3-12. Fill.**(a) *In general.***

Where allowed, fill material shall meet the following additional requirements.

(b) *Maximum fill amount.*

The placement of more than 600 cubic yards of fill per acre in the floodplain is prohibited except by variance.

(c) *Required alternate consideration.*

Elevating buildings by other methods must be considered unless 600 cubic yards or less of fill are required. An applicant shall demonstrate that fill is the only alternative to raising the building to at least the flood protection elevation, and that the amount of fill used will not affect the flood storage capacity or increase flooding onto neighboring properties.

(d) *Affect on adjacent properties.*

Fill shall be used only to the extent to which it does not adversely affect adjacent properties.

(e) *Materials.*

Fill shall consist of soil or rock materials only. Landfills, dumps, and sanitary soil fills shall not be permitted.

(f) *Compacting standards.*

Fill material shall be compacted in accordance with the standard proctor test method issued by the American Society for Testing and Materials (ASTM Standard D-698) to provide the necessary stability and resistance to erosion, scouring, or settling.

(g) *Slopes.*

Fill slopes shall be no steeper than 1 vertical to 2 horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Department of Public Works.

(h) *Hydrologic and hydraulic analyses.*

In the event buildings on adjacent properties are known or determined to be subject to flooding under current conditions, the local permitting official may require submission of hydrologic and hydraulic analyses to adequately demonstrate the effects of the proposed fill.

(City Code, 1976/83, art. 7, §5(a)(12).) (Ord. 88-188; Ord. 92-134.)

§ 3-13. Accessory or appurtenant structures.**(a) *In general.***

Due to their minimal investment, detached garages, storage structures, and accessory structures containing less than 300 square feet shall be exempt from the elevation or dry floodproofing standards of this Division I provided that all of the following conditions are met.

(b) *Plans statement.*

A statement shall be placed on the building plans which shall read as follows:

“No enlargement or conversion of this area to habitable space is to occur unless the lowest floor is elevated to 1 foot above the 100-year flood elevation. At this site the 100-year flood elevation is _____.”.

(c) *Elevation.*

The floor elevation of the accessory structure shall not qualify as a basement and must be constructed on or above grade.

(d) *Minimum resistance.*

The accessory structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

(e) *Firm anchorage.*

The accessory structure shall be firmly anchored to prevent flotation which may result in damage to other structures.

(f) *Flood damage potential.*

The accessory structure shall be designed to have low flood damage potential, including provisions to allow free flow of water into and out of it to maintain equal pressure.

(g) *Service facilities.*

The service facilities, such as electrical, plumbing, and heating equipment, shall be elevated to the applicable 100-year flood elevation or be floodproofed.

(h) *Maximum size.*

The accessory structure shall be comprised of no more than 300 square feet and no more than 1 story.

(i) *Insurance warning.*

The applicant shall be made aware that if the accessory structure is built below the 100-year flood elevation and is not floodproofed, the aforesaid structure may be susceptible to higher insurance premium rates for the structure and its contents.

(j) *Nonconversion agreement.*

(1) A nonconversion agreement shall be completed and signed by the property owner.

(2) The design and construction of the building shall follow the regulations stated in the agreement and be equipped with water equalizing vents as specified in §§ 3-4 and 3-5.

(City Code, 1976/83, art. 7, §5(a)(14).) (Ord. 88-188; Ord. 92-134.)

§ 3-14. Enclosures below lowest floor or flood-protection elevation.

New construction and substantial improvements of fully enclosed areas below the lowest floor, or below the 100-year flood {protection} elevation, including but not limited to crawl spaces, solid footings, and continuous foundations, sheds and garages, shall be designed to meet or exceed the following minimum criteria:

(1) a minimum of 2 openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided;

(2) the bottom of all openings shall be no higher than 1 foot above grade; and

(3) openings may be equipped with screens, louvers, valves, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

(City Code, 1976/83, art. 7, §5(a)(14).) (Ord. 88-188; Ord. 92-134.)

§ 3-15. Watercourses.

(a) *Variance required to alter.*

In all floodplain zones and/or areas within 25 feet from a water course, any development which proposes to alter a watercourse must obtain a variance from Baltimore City.

(b) *Conditions for encroachment to be minimized.*

All conditions for encroachment in the floodway must be minimized.

(c) *Required notices.*

Adjacent communities and property owners, FEMA, and the Maryland Water Resources Administration must be notified of any application.

(City Code, 1976/83, art. 7, §5(a)(15-a).) (Ord. 92-134.)

§ 3-16. Flood protection setback.*(a) Watercourse with floodplain.*

- (1) A minimum 25-foot flood protection setback shall be maintained from the edge of the banks of any watercourse delineated as having a floodplain on the floodway map or FIRM.
- (2) To prevent erosion, natural vegetation shall be maintained in this area.
- (3) Where natural vegetation does not exist along the water course, and conditions for replanting are suitable, high priority shall be given to planting trees in the setback area to stabilize banks and to enhance aquatic resources.

(b) Stream with no floodplain.

- (1) A minimum 25-foot flood protection setback shall be maintained from the top of the bank of any stream which has no designated floodplain.

- (2) Natural vegetation shall be maintained and, if needed, trees planted.

(City Code, 1976/83, art. 7, §5(a)(15-b).) (Ord. 92-134.)

§ 3-17. Utilities and facilities.*(a) In general.*

In the entire floodplain district, the design, placement, and construction of all public and private utilities and facilities shall meet the following requirements.

(b) Design and floodproofing.

- (1) New or replacement water supply systems and/or sanitary sewage systems shall be designed and floodproofed to eliminate or minimize infiltration of flood waters into the systems and discharges from the systems into flood waters, and to avoid impairment during flooding and to minimize flood damage.
- (2) All gas, electrical and other facility and utility systems shall be located, constructed, and floodproofed to eliminate or minimize flood damage.

(c) Sewage systems.

- (1) All pipes connected to sewage systems shall be sealed to prevent leakage.
- (2) Cesspools and seepage pits are prohibited.
- (3) Septic tanks are permitted provided they are securely anchored to resist buoyant forces during inundation.

(d) *New storm drainage facilities.*

All new storm drainage facilities within and leading to or from the floodplain district shall be adequately designed, floodproofed, and installed to eliminate or minimize property damage resulting from the flood waters of the 100-year flood and to minimize adverse environmental impacts of their installation and use.

(e) *Electric and plumbing systems.*

(1) All electric water heaters, electric furnaces, generators, heat pumps, air conditioners, and other permanent electrical installations shall be permitted only at or above 1 foot above the elevation of the 100-year flood.

(2) No electrical distribution panels shall be permitted at an elevation less than 3 feet above the elevation of the 100-year flood.

(3) Water heaters, furnaces, toilets, showers, sinks, and other permanent mechanical installations shall be permitted only at or above one 1 foot above the level of the 100-year flood.

(City Code, 1976/83, art. 7, §5(a)(16).) (Ord. 88-188; Ord. 92-134.)

§ 3-18. Variances.

Any variances allowed under the provisions of this Division I shall meet the requirements specified in Subtitle 5.

(City Code, 1976/83, art. 7, §5(a)(5).) (Ord. 88-188.)

§§ 3-19 to 3-20. {Reserved}**PART 3. FLOODWAY REGULATIONS****§ 3-21. In general.**

In the Floodway (F1), the following regulations shall apply.

(City Code, 1976/83, art. 7, §5(b)(intro).) (Ord. 88-188.)

§ 3-22. Private development prohibited.

Private development including residential, commercial and industrial development, shall be prohibited.

(City Code, 1976/83, art. 7, §5(b)(1).) (Ord. 88-188; Ord. 92-134.)

§ 3-23. Public development requires offset.

Public development shall not be permitted except where the effect of such development on flood heights is fully offset by accompanying stream modification and the development is approved by all appropriate local authorities, the Maryland Water Resources Administration and the U. S. Army Corps of Engineers.

(City Code, 1976/83, art. 7, §5(b)(2).) (Ord. 88-188; Ord. 92-134.)

§ 3-24. Engineering report.*(a) Report required.*

All proposals to offset the effect of development in the floodway by construction of stream modifications shall be documented by an engineering report prepared by a registered professional engineer which fully evaluates the effects of such construction and which shall be submitted with the application for a building permit.

(b) Basis.

The report shall use the 100-year flood and floodway data as prepared by the Federal Emergency Management Agency and adopted herein as the basis of analysis.
(City Code, 1976/83, art. 7, §5(b)(3)(1st and 2nd sens.)) (Ord. 88-188.)

§ 3-25. Compliance with Districtwide regulations.

Any development shall meet the requirements of Part 2 of this subtitle
(City Code, 1976/83, art. 7, §5(b)(3)(3rd sen.)) (Ord. 88-188.)

§ 3-26. Map revision.*(a) When required.*

(1) Any development in the floodway which may result in any increase in water surface elevations or change to the floodway must be submitted to the Federal Emergency Management Agency for a conditional letter of map revision.

(2) Failure to receive this letter shall be grounds for denial of the permit.

(b) Required submissions.

Hydrologic and hydraulic analyses based on existing floodway models and performed in accordance with standard engineering practices and certified by a registered professional engineer must be submitted.

(City Code, 1976/83, art. 7, §5(b)(3)(2nd par.)) (Ord. 88-188; Ord. 92-134.)

§ 3-27. Alternative analysis.*(a) Required for permit.*

An alternative analysis must be prepared for any development in the floodway before a permit may be issued.

(b) Scope of analysis.

Before a permit may be issued, the appropriate agency shall submit an alternative analysis to the Department of Planning which demonstrates that:

- (1) no reasonable alternative exists outside the floodway;
- (2) encroachment in the floodway is the minimum necessary;
- (3) the development will withstand the 100-year flood without significant damage; and
- (4) the development will not increase downstream or upstream flooding or erosion, or significantly contribute to debris.

(City Code, 1976/83, art. 7, §5(b)(3)(3rd par.) and (3-a).) (Ord. 88-188; Ord. 92-134.)

§ 3-28. Changes to existing structures.

(a) *Substantial improvements.*

- (1) Existing structures in the floodway shall be substantially improved only:
 - (i) by variance; and
 - (ii) if they can be brought into conformance with this Division I without increasing the footprint of the existing structure.
- (2) Substantial improvement of a non-conforming structure and/or development regardless of location shall be undertaken only in compliance with the provisions of this Division I and any other applicable law.

(b) *Substantial damage or replacement.*

- (1) In the event of substantial damage or replacement, the appropriate agency shall submit an alternative analysis to determine if the structure can be relocated to a less hazardous site.
- (2) Where replacement structures cannot be relocated, they shall be limited to the footprint of the previous structure.

(c) *Minor additions.*

- (1) Minor additions (less than substantial) must be elevated to the flood protection elevation on pilings or columns.
- (2) Permits for incremental improvements and additions shall be tracked by the local permitting official, and if cumulative improvements constitute substantial improvement, no further permits may be issued unless the structure conforms to the provisions of this Division I.

(d) *Elevation or floodproofing.*

The modification, alteration, repair, reconstruction or improvement of any non-conforming structure and/or development amounting to less than 50% of its fair market value shall be elevated and/or floodproofed to the greatest extent possible.

(e) *Nuisance to be eliminated.*

Uses or adjuncts thereof which are, or become, nuisances shall not be permitted to continue.
(*City Code, 1976/83, art. 7, §5(b)(4).*) (*Ord. 88-188; Ord. 92-134.*)

§ 3-29. Prohibited structures.

(a) *Manufactured homes or buildings.*

The placement of any manufactured homes or buildings shall be prohibited.

(b) *Fences, enclosures, etc.*

The following shall not be placed or caused to be placed in the floodway:

(1) fences, except 2-rail fences; and

(2) any enclosures or materials (including fill) which may impede, retard, or change the direction of the flow of water, or that will catch or collect debris carried by such water, or that is placed where the natural flow of stream or flood waters would carry the same downstream to the damage or detriment of public or private property in or adjacent to the floodplain.

(*City Code, 1976/83, art. 7, §5(b)(5), (6).*) (*Ord. 88-188.*)

§ 3-30. Use of data.

The Department of Planning shall obtain, review, and reasonably utilize any 100-year flood elevation and floodway data available from a federal, state, or other source, such as the U. S. Army Corps of Engineers, the Soil Conservation Service, the Maryland Water Resources Administration, or any regional planning organization, in the enforcement of this Division I.
(*City Code, 1976/83, art. 7, §5(b)(7).*) (*Ord. 88-188.*)

PART 4. OTHER SUBDISTRICT REGULATIONS

§ 3-31. Approximate Floodplain (Zone A).

(a) *In general.*

In the Approximate Floodplain (Zone A), the following regulations apply.

(b) *Use of data.*

(1) The Department of Planning shall obtain, review, and reasonably utilize any 100-year flood elevation and floodway data available from a federal, state, or other source, such as the U.S. Army Corps of Engineers, the Soil Conservation Service, the Maryland Water Resources Administration, or any regional planning organization in the enforcement of this Division I.

- (2) When the 100-year flood elevation is not known, the Department of Planning in consultation with the Water Resources Administration shall evaluate each site and establish an approximate 100-year flood elevation.

(c) *Compliance with Districtwide regulations.*

The development regulations of Part 2 of this subtitle shall be applied.
(City Code, 1976/83, art. 7, §5(c).) (Ord. 88-188.)

§ 3-32. Coastal Floodplain.

In the Coastal Floodplain, the development regulations for the Floodway Fringe cited in Part 2 of this subtitle shall apply.
(City Code, 1976/83, art. 7, §5(d).) (Ord. 88-188.)

§ 3-33. Coastal High Hazard Area (Zone V).

(a) *In general.*

In the Coastal High Hazard Area (Zone V), the following regulations shall apply in addition to the development regulations cited in Part 2 of this subtitle.

(b) *Land below 100-year flood level.*

No land below the level of the 100-year flood may be developed unless such new construction or substantial improvement:

- (1) is located landward of the reach of mean high tide;
- (2) is elevated on adequately anchored pilings or columns to resist flotation, collapse, and lateral movement due to the effects of the 100-year wind and water loads acting simultaneously on all building components, and the bottom of the lowest horizontal structural members of the lowest floor (excluding the pilings or columns) is elevated to at least 1 foot above the 100-year flood elevation;
- (3) has been certified by a registered professional engineer or architect that it is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash and will meet the requirements of paragraph (2) of this subsection;
- (4) has no basement and has the space below the lowest floor free of obstructions or is constructed with break away walls intended to collapse under stress without jeopardizing the structural support of the structure so that the impact on the structure by abnormally high tides or wind-driven water is minimized. Such temporarily enclosed space shall not be used for human habitation; and
- (5) does not utilize fill for structural support of buildings or structures.

(c) *Required showings.*

No new development in the coastal high hazard area shall be permitted unless the applicant demonstrates that:

- (1) the encroachment into the coastal high hazard is the minimum necessary;
- (2) the development will withstand the 100-year wind and water loads without damage;
- (3) the development will not create an additional hazard to existing structures.

(d) *Existing structures.*

Existing non-conforming uses and/or structures located on land below the level of the 100-year flood shall not be expanded vertically, horizontally, or otherwise unless:

- (1) the foundation system is certified by a professional engineer or architect as capable of supporting the existing building and the proposed improvements during the 100-year storm; and
- (2) all construction is in full compliance with this and all other applicable ordinances.

(e) *Manufactured homes or buildings.*

The placement of manufactured homes or buildings is strictly prohibited.
(*City Code, 1976/83, art. 7, §5(e).*) (*Ord. 88-188; Ord. 92-134.*)

SUBTITLE 4
DEVELOPMENT PERMITS

§ 4-1. Permit required.

A permit issued by the Department of Housing and Community Development:

- (1) is required for all development (including, but not limited to, subdivision of land, construction of and/or substantial improvements to buildings and structures, placement of manufactured homes, fill, temporary development, new or replacement infrastructure, or any combination thereof) in the floodplain district; and
- (2) shall be granted only after necessary permits from the State of Maryland, Water Resources Administration, and all other applicable state and federal and local agencies have been obtained and verified by the Department of Planning.

(City Code, 1976/83, art. 7, §6(intro).) (Ord. 88-188.)

§ 4-2. Applications.

(a) Required information.

The application for the permit shall be submitted to the Department of Housing and Community Development and shall contain information including, but not limited to, the following:

- (1) name and address of applicant. The applicant must be the owner or an authorized agent of the owner;
- (2) name and address of owner of land on which development is proposed;
- (3) name and address of contractor;
- (4) site location;
- (5) copies of the issued permit or a written statement from the issuing authority indicating that a permit is not required from the U.S. Army Corps of Engineers, Maryland Department of Natural Resources, Wetlands Division, and/or Maryland Department of Natural Resources, Watershed Permits Division, where necessary;
- (6) a plan of the site showing the size and location of the proposed development as well as any existing buildings or structures;
- (7) plans drawn to scale, showing the location, dimensions, and elevation in Mean Sea Level/NGVD of the site in relation to the stream channel, shoreline, and/or floodplain district; and
- (8) summary description of proposed work and estimated cost.

(b) *Conditional information.*

- (1) Depending on the type of development and/or structure involved and for structures to be elevated above the 100-year flood elevation, the following information shall also be shown on plans submitted with the application:
 - (i) the size of the proposed structure(s) and its position on the lot where it is to be constructed;
 - (ii) the elevations of the proposed final grading and lowest floor, and the existing ground and 100-year flood elevation as certified by a registered professional engineer, surveyor or architect; and
 - (iii) the method of elevating the proposed structure, including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc.
- (2) These plans shall be prepared by a registered professional engineer or architect.

(c) *Applications for variances.*

- (1) If a variance is being applied for under the provisions of § 5-1(1), certification by a registered professional engineer or architect that the structure will be dry floodproofed in accordance with the specifications of the U.S. Army Corps of Engineers to 1 foot above the 100-year flood elevation.
- (2) If a variance is being applied for under § 5-1(2), appropriate building modifications shall be constructed to automatically equalize hydrostatic flood forces by allowing for the entry and exit of floodwaters, including:
 - (i) a minimum of 2 openings on separate sides of the structure having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided;
 - (ii) the bottom of all openings shall be no higher than 1 foot above grade;
 - (iii) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(d) *Appraisals for existing structures.*

If substantial improvement to an existing structure is proposed, an appraisal shall be submitted by a professional real estate appraiser of the fair market value of the existing structure less land value where a substantial improvement is proposed.

(City Code, 1976/83, art. 7, §6(a).) (Ord. 88-188.)

§ 4-3. Plans for subdivisions or new development.*(a) Plan drawing required.*

- (1) All proposals for the subdivision of land and/or new development shall include a plan drawing showing the location of all existing and proposed public and private utilities, facilities, drainage structure, and road access.
- (2) If the 100-year elevation has been determined by the Flood Insurance Study or other reliable source approved by the Water Resources Administration, such flood elevation(s) shall be delineated on the proposed plan.
- (3) If the proposal involves more than 50 lots or greater than 5 acres and the 100-year flood elevation has not been determined for the land area, the developer shall determine the 100-year flood elevation and delineate such flood elevation on the proposed plan.

(b) Certification and review.

All plans shall be certified by a registered professional engineer and shall be reviewed by the City agencies responsible for stormwater management and erosion control to assure that:

- (1) all such proposals are consistent with the need to minimize flood damage;
- (2) all necessary permits have been received from the State of Maryland Water Resources Administration and appropriate federal agencies;
- (3) all public and private utilities and facilities (including sewer, water, telephone, electric, gas, etc.) are located, constructed, and floodproofed to minimize or eliminate flood damage;
- (4) adequate drainage is provided to reduce exposure to flood hazards;
- (5) at least 1 access point, during the 100-year flood, shall provide safe vehicular access to and egress from the subdivision and/or new development; and
- (6) adequate measures have been taken to minimize adverse environmental impacts of the proposed development.

(City Code, 1976/83, art. 7, §6(b).) (Ord. 88-188.)

§ 4-4. Conformance to codes required.

A permit shall be granted only after it has been determined that the proposed work will be in conformance with the requirements of this and all other applicable codes and ordinances.

(City Code, 1976/83, art. 7, §6(c).) (Ord. 88-188.)

§ 4-5. Alteration of watercourse.*(a) Notices required.*

- (1) When the proposed development includes the relocation or alteration of a watercourse, evidence shall be presented as part of the permit application that all adjacent communities and the Water Resources Administration have been notified by certified mail and have approved of the proposed alteration or relocation.
- (2) Copies of these notifications shall then be forwarded to the Federal Emergency Management Agency, Federal Insurance Administration.

(b) Assurances of flood-carrying capacity.

In addition, the developer shall assure the City, in writing, that the flood carrying capacity within the altered or relocated portion of the watercourse in question will be maintained.

(City Code, 1976/83, art. 7, §6(d).) (Ord. 88-188.)

§ 4-6. Changes to application, permit, etc.

After the issuance of a building permit by the Department of Housing and Community Development, no changes of any kind shall be made to the application, permit, or any of the plans, specifications, or other documents submitted with the application without the written consent or approval of the Department of Housing and Community Development.

(City Code, 1976/83, art. 7, §6(e).) (Ord. 88-188.)

§ 4-7. Inspections; permit revocation.*(a) Inspections by City and State.*

- (1) During the construction period, the Department of Housing and Community Development shall inspect the premises to determine that the work is progressing in compliance with the permit and with all applicable laws and ordinances.
- (2) The premises shall also be subject to inspection by the State of Maryland, Water Resources Administration.

(b) Revocation of permit.

In the event that the Department of Housing and Community Development determines that the work is not in compliance with the permit or all applicable laws and ordinances, or that there has been a false statement or misrepresentation by the applicant, the Department of Housing and Community Development, upon instruction, from the Department of Planning, may revoke the permit and report such fact to the Maryland Water Resources Administration.

(City Code, 1976/83, art. 7, §6(f).) (Ord. 88-188.)

§ 4-8. Occupancy permit.*(a) Required.*

An occupancy permit:

- (1) shall be required for all construction and substantial improvements in the floodplain district; and
- (2) shall not be issued until the Department of Housing and Community Development has been provided with a completed elevation certificate prepared by a registered land surveyor or professional engineer certifying the “as-built” condition of the subject construction.

(b) Data to be used.

The datum used on elevation certificates shall be Mean Sea Level as established by the National Geodetic Vertical Datum of 1929.

(City Code, 1976/83, art. 7, §6(g).) (Ord. 88-188.)

§ 4-9. Record of permit actions.*(a) Required.*

A record of all permit actions in the floodplain district shall be maintained by the Department of Planning and shall be available upon request by the Federal Emergency Management Agency or its authorized agent (the Water Resources Administration) during periodic assessments of Baltimore City’s participation in the National Flood Insurance Program.

(b) Contents.

Such record shall include, at a minimum,

- (1) the date the permit was issued;
- (2) the “as-built” lowest floor elevation of all new construction or substantial improvement;
- (3) the issuance date of any occupancy permit;
- (4) a copy of the completed elevation certificate; and
- (5) any map amendments issued by the Federal Emergency Management Agency.

(City Code, 1976/83, art. 7, §6(h).) (Ord. 88-188.)

SUBTITLE 5
FLOODPLAIN VARIANCES

§ 5-1. In general.

Applications for variances may be considered by the Department of Planning, after a review by the City agencies responsible for stormwater management and erosion control, for:

- (1) new construction of or substantial improvements to nonresidential structures or portions thereof which will be floodproofed in a watertight fashion;
- (2) new construction of or substantial improvements to detached and attached garages which are used solely for storage or parking of vehicles and designed to automatically equalize hydrostatic pressures on walls by allowing for the entry and exit of floodwater and meet the requirements of § 3-13;
- (3) functionally dependent uses which cannot perform their intended purpose unless they are located or carried out in close proximity to water. A functionally dependent use includes only docking facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities;
- (4) reconstruction, rehabilitation, or restoration of structures listed in the National Register of Historic Places or State Inventory of Historic Places or the City Landmark List;
- (5) all necessary City utilities.

(City Code, 1976/83, art. 7, §7(a).) (Ord. 88-188; Ord. 92-134.)

§ 5-2. Prohibited variances.

Variances shall not be granted for:

- (1) the placement of fill in the floodway or the Coastal High Hazard Area unless approved by appropriate federal and state agencies;
- (2) new construction of or substantial improvement to any structure located in the floodway or the Coastal High Hazard Area;
- (3) manufactured homes or buildings within the floodway and Coastal High Hazard Area; or
- (4) any development within the floodway.

(City Code, 1976/83, art. 7, §7(b).) (Ord. 88-188.)

§ 5-3. Conditions.

The granting of variances shall be subject to the following conditions:

- (1) a demonstration of good and sufficient cause;
- (2) for new construction or substantial improvements in category (a)(3) above *{former §7(a)(3), since repealed}*, a determination that failure to grant the variance would result in exceptional hardship to the applicant; economic hardship shall not be considered exceptional;
- (3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, or create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
- (4) the stipulation that all residential structures will have the lowest floor elevated to the greatest extent possible with respect to the 100-year flood elevation; and
- (5) granting of a variance from the Water Resources Administration, favorable comments from the State Coordinating Office of the Water Resources Administration, and compliance with §§ 5-2 and 5-4.

(City Code, 1976/83, art. 7, §7(c).) (Ord. 88-188.)

§ 5-4. Required determination.

Variances shall only be granted upon a determination

- (1) that the variance is the minimum necessary to afford relief, considering the flood hazard; and
- (2) that local public funds may not be available to mitigate the results of such variance.

(City Code, 1976/83, art. 7, §7(d).) (Ord. 88-188.)

§ 5-5. Applications.

(a) *In general.*

The application for a variance shall be submitted to the Department of Planning and shall comply with the provisions and requirements of this Division I.

(b) *Notices to applicant.*

(1) The applicant shall be notified in writing by the Department of Planning:

- (i) of the increased premium rates for flood insurance; and
- (ii) that construction below the level of the 100-year flood increases risks to life and property.

- (2) Such notification shall be maintained as part of the record of all variance actions as required in § 5-7 below.

(City Code, 1976/83, art. 7, §7(e), (f).) (Ord. 88-188.)

§ 5-6. Agreement not to convert storage structures, etc.

The applicant/owner of storage structures, garages, and/or accessory structures for which a variance is granted shall sign an agreement that such structures shall never be converted to habitable space.

(City Code, 1976/83, art. 7, §7(g).) (Ord. 88-188.)

§ 5-7. Record of variance actions.

A record of all variance actions, including justification for their issuance:

- (1) shall be maintained by the Department of Planning;
- (2) shall be included in the bi-annual report submitted to the Federal Insurance Administrator;
and
- (3) shall be available upon request by the Federal Emergency Management Agency or its authorized agent during periodic assessments of Baltimore City's participation in the National Flood Insurance Program.

(City Code, 1976/83, art. 7, §7(h).) (Ord. 88-188.)

§ 5-8. Historic structures.

Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed in the National Register of Historic Places or State Inventory of Historic Places or the City Landmark List, without regard to the procedures set forth herein, provided that such activity does not cause an increase in the elevation of the 100-year flood as established and adopted by this Division I.

(City Code, 1976/83, art. 7, §7(i).) (Ord. 88-188.)

§ 5-9. Notice on deed.

Notice of the flood hazard and the variance action shall be placed on the deed conveying title to land on which construction has occurred hereunder.

(City Code, 1976/83, art. 7, §7(j).) (Ord. 88-188; Ord. 92-134.)

**SUBTITLE 6
ADMINISTRATION**

§ 6-1. Municipal non-liability.

The granting of a permit or approval is not a representation, guarantee, or warranty of any kind and shall neither create nor impose any liability upon the City, its officials, employees, or agents.
(*City Code, 1976/83, art. 7, §9.*) (*Ord. 88-188.*)

§ 6-2. Administrative fees.

(a) *City may impose.*

The City may impose additional application fees commensurate with those costs incurred in the processing, review, and evaluation of permit applications for development in the floodplain district.

(b) *Costs included.*

Such costs may include, but are not limited to:

- (1) consultant fees for certification of as-built condition of structures;
- (2) floodplain district and sub-district delineations;
- (3) environmental impact characterizations;
- (4) staff assignments; and
- (5) other related costs.

(*City Code, 1976/83, art. 7, §10.*) (*Ord. 88-188.*)

SUBTITLE 7
ENFORCEMENT

§ 7-1. Noncomplying structures abatable as public nuisance.

Any structure constructed, reconstructed, enlarged, altered, or relocated in noncompliance with this Division I is hereby declared to be a public nuisance and abatable as such.
(*City Code, 1976/83, art. 7, §8 (3rd par.).*) (Ord. 88-188.)

§ 7-2. Notice to federal agencies.

The Federal Insurance Administrator and the Maryland Water Resources Administration shall be notified immediately in writing of any structure or property in violation of this Division I.
(*City Code, 1976/83, art. 7, §8 (4th par.).*) (Ord. 88-188.)

§ 7-3. Denial of flood insurance.

New or renewal National Flood Insurance shall be denied for any structure remaining in violation or situated on property in violation of this Division I.
(*City Code, 1976/83, art. 7, §8 (5th par.).*) (Ord. 88-188.)

§ 7-4. {Reserved}

§ 7-5. Penalties.

(a) *In general.*

Any person who violates a provision of this Division I or fails to comply with any requirement thereof, shall be held liable for such violation and guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than \$500, except as provided hereinbelow, for each violation.

(b) *Each day a separate offense.*

Every day that a violation continues shall be deemed a separate offense, and proof that a violation exists on any date following the issuance of a notice of violation shall constitute prima facie evidence that the violation has continued throughout the intervening period of time.

(c) *Penalty not substitute for correcting noncompliance.*

The imposition of a fine or penalty for any violation of or noncompliance with this Division I shall not excuse the violation or noncompliance nor permit it to continue, and all such offenders shall be required to correct or remedy such violation or noncompliance within a reasonable time.
(*City Code, 1976/83, art. 7, §8 (1st, 2nd pars.).*) (Ord. 88-188.)

SUBTITLES 8 TO 20
{RESERVED}

DIVISION II: STORMWATER MANAGEMENT

EDITOR'S NOTE: Ordinance 02-367 repealed former Subtitles 21 to 26 in their entirety and substituted the following new Subtitles 21 to 28, effective July 27, 2002.

Section 4 of Ordinance 02-367 established the following transition rules:

[P]lans submitted before the effective date of this Ordinance will be reviewed under the then-existing stormwater management regulations. If those plans are not approved or a waiver granted within 1 year from the date they were submitted, the plans must be resubmitted under this Ordinance. If, after a plan has been reviewed and approved under the previous regulations, construction does not begin before July 1, 2004, the plan must be resubmitted under this Ordinance.

**SUBTITLE 21
DEFINITIONS; GENERAL PROVISIONS****§ 21-1. Definitions.****(a) *In general.***

In this Division II, the following terms have the meaning indicated.

(b) *Adverse impact.*

“Adverse impact” means any effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics, or usefulness for human or natural uses, that:

(1) is deleterious; and

(2) either:

- (i) is or potentially can be harmful or injurious to human health, welfare, or safety, to property, or to biological productivity, diversity, or stability; or
- (ii) unreasonably interferes with the enjoyment of life or property, including outdoor recreation.

(c) *Best management practice .*

“Best management practice” means a structural or nonstructural practice designed to store temporarily or treat stormwater runoff in order to mitigate flooding, reduce pollution, and provide other amenities.

(d) *Channel protection storage volume.*

“Channel protection storage volume” means the volume, calculated in accordance with the Design Manual, used to design structural management practices to control stream channel erosion.

(e) *Department.*

“Department” means the Baltimore City Department of Public Works.

(f) *Design Manual.*

“Design Manual” means the 2000 Maryland Stormwater Design Manual, Volumes I and II, and any subsequent additions, revisions, and amendments to it.

(g) *Develop.*

“Develop” means to change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial, or institutional construction or alteration.

(h) *Disturb.*

(1) “Disturb” means to:

- (i) clear or remove trees and brush from land;
- (ii) grade, stockpile, remove, excavate, scarify, or fill soil;
- (iii) grub or remove stumps; or
- (iv) strip or remove vegetative surface cover.

(2) “Disturb” does not include:

- (i) mowing of grass;
- (ii) trimming of trees; or
- (iii) other maintenance activities that do not create unvegetated ground.

(i) *Drainage area.*

“Drainage area” means an area, measured in a horizontal plane, that:

- (1) contributes runoff to a single point; and
- (2) is enclosed by a ridge line.

(j) *Extreme flood volume.*

“Extreme flood volume” means the storage volume required to control infrequent, large storm events in which overbank flows reach or exceed the boundaries of the 100- year floodplain.

(k) *Includes; including.*

“Includes” or “including” means by way of illustration and not by way of limitation.

(l) *Infiltration.*

“Infiltration” means the passage or movement of water into the soil surface.

(m) *Off-site ... management.*

“Off-site ... management” means the design and construction of a facility necessary to control stormwater from more than one development.

(n) *On-site ... management.*

“On-site ... management” means the design and construction of systems necessary to control stormwater within one development.

(o) *Overbank flood protection volume.*

“Overbank flood protection volume” means the volume, calculated in accordance with the Design Manual, controlled by structural practices to prevent an increase in the frequency of out of bank flooding generated by development.

(p) *Person.*

“Person” means:

(1) an individual;

(2) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind; or

(3) a partnership, firm, association, corporation, or other entity of any kind.

(q) *Qualitative Control.*

See “Stormwater management – Qualitative control”.

(r) *Quantitative Control.*

See “Stormwater management – Quantitative control”.

(s) *Recharge volume.*

“Recharge volume” means that portion of the water quality volume, calculated in accordance with the Design Manual, used to maintain groundwater recharge rates at development sites.

(t) *Redevelopment.*

“Redevelopment” means any construction, alteration, or improvement that disturbs more than 5,000 square feet of land on sites where existing land use is commercial, industrial, institutional, or multi-family residential.

(u) *Sediment.*

“Sediment” means soils or other surficial materials that are the product of erosion and are transported or deposited by the action of wind, water, ice, or gravity.

(v) *Site.*

“Site” means:

- (1) for “new development”, any tract, lot, or parcel of land or combination of tracts, lots, or parcels of land that are:
 - (i) in one ownership; or
 - (i) in diverse ownership but contiguous where development is to be performed as part of a unit, subdivision, or project; and
- (2) for “redevelopment”, either of the following, as the Department determines:
 - (i) the area of new construction as shown on an approved site plan; or
 - (ii) the original parcel.

(w) *Stabilization.*

“Stabilization” means the prevention of soil movement by any of various vegetative or structural means.

(x) *Stormwater management – Qualitative control.*

- (1) “Stormwater management” means, for qualitative control, a system of vegetative, structural, and nonstructural practices that reduce or eliminate pollutants that might otherwise be carried by surface runoff.
- (2) “Stormwater management” includes, for qualitative control, design parameters for:
 - (i) channel protection storage volume;
 - (ii) overbank flood protection volume; and
 - (iii) extreme flood volume.

(y) *Stormwater management – Quantitative control.*

- (1) “Stormwater management” means, for quantitative control, a system of vegetative, structural, and nonstructural practices that control the increased volume and rate of surface runoff caused by man-made changes to the land.
- (2) “Stormwater management” includes, for quantitative controls, design parameters for:
 - (i) water quality volume; and
 - (ii) recharge volume.

(z) *Stormwater management plan.*

“Stormwater management plan” means a set of drawings, reports, and other documents that:

- (1) is submitted as a prerequisite to obtaining a stormwater management approval; and
- (2) contains all of the information and specifications required by this Division II.

(aa) *Watershed.*

“Watershed” means the total drainage area contributing runoff to a single point.

(bb) *Water quality volume.*

“Water quality volume” means the volume needed, calculated in accordance with the Design Manual, to capture and treat the runoff from 90% of the average annual rainfall at a development site.

(cc) *Wetlands.*

“Wetlands” means an area that has saturated soils or periodic high groundwater levels and vegetation adapted to wet conditions and periodic flooding.

(Ord. 02-367.)

§ 21-2. Rules of construction.

(a) *In general.*

In interpreting and applying this Division II, the following rules of construction apply.

(b) *Captions or headings.*

The captions or headings of the various sections and subsections:

- (1) are for convenience of reference only, intended to summarize the statutory provisions that follow; and

(2) are not law and are not to be taken as affecting the meaning or effect of the law.

(c) *Conflicting provisions.*

(1) *Division sets minimum requirements.*

In their interpretation and application, the provisions of this Division II must be taken to be the minimum requirements for the promotion of the public health, safety, and general welfare.

(2) *Most restrictive provision governs.*

If any condition imposed by a provision of this Division II is either more or less restrictive than a comparable condition imposed by any other provision of this Division or by any other law, rule, or regulation of any kind, the condition that is the more restrictive governs.

(d) *Gender.*

Words denoting one gender include and apply to the other genders as well.

(e) *Mandatory, prohibitory, and permissive terms.*

(1) *Mandatory terms.*

“Must” and “shall” are each mandatory terms used to express a requirement or to impose a duty.

(2) *Prohibitory terms.*

“Must not”, “may not”, and “no ... may” are each mandatory negative terms used to establish a prohibition.

(3) *Permissive terms.*

“May” is permissive.

(f) *Number.*

The singular includes the plural and vice versa.

(g) *References to other laws.*

Whenever a provision of this Division II refers to any part of the City Code or to any other law, the reference applies to any subsequent amendment of the law referred to, unless the referring provision expressly provides otherwise.

(h) *Severability.*

All provisions of this Division II are severable. If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the provision to any person or circumstances is invalid, the remaining provisions and the application of those provisions to other persons or circumstances are not affected by that decision.

(i) *Time computations.*

(1) *Computation of time after an act, event, or default.*

- (i) In computing any period of time prescribed by this Division II, the day of the act, event, or default after which the designated period of time begins to run is not included.
- (ii) If the period of time allowed is more than 7 days, intermediate Saturdays, Sundays, and legal holidays are counted.
- (iii) If the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal holidays are not counted.
- (iv) The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Computation of time before a day, act, or event.*

- (i) In determining the latest day for performing an act that is required by this Division II to be performed a prescribed number of days before a certain day, act, or event, all days preceding that day, including intervening Saturdays, Sundays, and legal holidays, are counted in the number of days so prescribed.
- (ii) The latest day is included in the determination unless it is a Saturday, Sunday, or legal holiday, in which event the latest day is the first preceding day that is not a Saturday, Sunday, or legal holiday.

(Ord. 02-367.)

§ 21-3. Incorporation by reference.

(a) *In general.*

For purposes of this Division II, the following documents are incorporated by reference:

- (1) The Design Manual, which serves as the official City guide for stormwater principles, methods, and practices; and
- (2) The USDA Natural Resources Conservation Service Maryland Conservation Practice Standard Pond Code 378 (January 2000).

(b) *Defined terms.*

(1) Terms used in the Design Manual have the meanings ascribed to them in the Design Manual or otherwise by the State Water Management Administration.

(2) These terms include:

(i) “Agricultural land management activities”.

(ii) “Aquifer”.

(iii) “Detention structure”.

(iv) “Direct discharge”.

(v) “Extended detention”.

(vi) “Grade”.

(Ord. 02-367.)

§ 21-4. Purpose; authority.

(a) *Purpose.*

The purpose of this Division II is to:

(1) protect, maintain, and enhance the public health, safety, and general welfare through the management of stormwater;

(2) protect public and private property from damage;

(3) reduce the adverse effects of development;

(4) control stream channel erosion;

(5) reduce local flooding; and

(6) maintain after development, as nearly as possible, pre-development runoff characteristics.

(b) *Authority.*

This Division II is adopted under the authority of State Environment Article, Title 4, Subtitle 2.

(Ord. 02-367.)

§ 21-5. Administration.*(a) In general.*

The Baltimore City Department of Public Works is responsible for administering and enforcing this Division II.

(b) Rules and regulations.

(1) The Department may adopt rules and regulations to carry out this Division II.

(2) A copy of these rules and regulations must be filed with the Department of Legislative Reference before they become effective.

(Ord. 02-367.)

§ 21-6. Scope.*(a) In general.*

Except as specified in subsection (b) of this section, this Division II applies to all development within the corporate limits of Baltimore City.

(b) Exemptions.

The following activities are exempt from this Division II:

(1) agricultural land management activities that employ methods and procedures to further crop and livestock production and conservation to conserve related soil and water resources;

(2) construction, grading, or development that does not disturb more than 5,000 square feet of land; and

(3) development regulated under a State law that provides for managing stormwater runoff.

(Ord. 02-367.)

SUBTITLE 22
STORMWATER MANAGEMENT PLANS

§ 22-1. Plan required.

Except as otherwise expressly provided in this Division II, no person may develop any land unless the person:

- (1) establishes stormwater management measures that control or manage runoff from the development; and
- (2) incorporates those measures into a stormwater management plan approved by the Department.

(Ord. 02-367.)

§ 22-2. Design and construction.

These stormwater management measures must:

- (1) meet the design requirements of the Design Manual; and
- (2) be constructed according to:
 - (i) an approved plan for new development; or
 - (ii) the policies stated in § 23-7 of this Division II for redevelopment.

(Ord. 02-367.)

§ 22-3. Minimum control requirements.

(a) In general.

The minimum control requirements for these management measures are as provided in this section and the Design Manual.

(b) Volume sizing criteria.

The Design Manual's sizing criteria for recharge volume, water quality volume, and channel protection storage volume must be used to design best management practices.

(c) 10-year frequency storm event.

Runoff from the 10-year frequency storm event must be controlled in accordance with the Design Manual if the Department determines that historical flooding problems exist and downstream floodplain development and conveyance system design cannot be controlled.

(d) *Additional control requirements.*

The Department may require more than the minimum control requirements of the Design Manual if:

- (1) hydrologic or topographic conditions warrant; or
- (2) flooding, stream channel erosion, or water quality problems exist downstream from a proposed project.

(e) *Consistency with FHMA plans.*

Where applicable, stormwater management and development plans must be consistent with watershed management plans and flood management plans approved by the State Water Management Administration under the Flood Hazard Management Act of 1976.

(Ord. 02-367.)

§ 22-4. Structural and nonstructural practices.

(a) *In general.*

- (1) In designing stormwater management measures, structural and nonstructural practices must be used, either alone or in combination.
- (2) These structural and nonstructural practices, their selection, basic design criteria, methodologies, and construction specifications:
 - (i) must comply with the Design Manual; and
 - (ii) are subject to approval of the Department and the State Water Management Administration.

(b) *Structural practices.*

- (1) The following structural stormwater management practices must be designed to satisfy the applicable minimum control requirements established in § 22-3 of this subtitle.
 - (i) stormwater management ponds;
 - (ii) stormwater management wetlands;
 - (iii) stormwater management infiltration;
 - (iv) stormwater management filtering systems;
 - (v) stormwater management open channel systems; and
 - (vi) other practices provided in the Design Manual.

(2) In selecting structural practices, consideration must be given to the performance criteria specified in the Design Manual for:

- (i) general feasibility;
- (ii) conveyance;
- (iii) pretreatment;
- (iv) treatment and geometry;
- (v) environment and landscaping; and
- (vi) maintenance.

(3) Structural practices must accommodate the unique hydrologic or geologic regions of the City.

(c) *Nonstructural practices.*

(1) The following nonstructural stormwater management practices must be applied to minimize increases in new development runoff:

- (i) natural area conservation;
- (ii) disconnection of rooftop runoff;
- (iii) disconnection of non-rooftop runoff;
- (iv) sheet flow to buffers;
- (v) grass channels; and
- (vi) environmentally sensitive development.

(2) The use of nonstructural practices is encouraged to minimize the reliance on structural best management practices.

(3) The minimum control requirements listed in § 22-3 of this subtitle may be reduced when nonstructural practices are incorporated into site designs according to the Design Manual.

(4) The use of nonstructural practices may not conflict with existing State or local laws, ordinances, regulations, or policies.

(5) Nonstructural practices used to reduce the minimum control requirements:

- (i) must be recorded in the land records of Baltimore City;
- (ii) are binding on subsequent property owners; and

(iii) may not be altered without the prior approval of the Department.

(d) *Alternative practices.*

(1) Alternative structural and nonstructural stormwater management practices may be used for new development water quality control if they:

(i) meet the performance criteria established in the Design Manual; and

(ii) are approved by the State Water Management Administration.

(2) Practices used for redevelopment projects must be approved by the Department.

(e) *Impact analysis.*

(1) For the purposes of modifying the minimum control requirements or design criteria, the developer must submit to the Department an analysis of the impacts of stormwater flows downstream in the watershed.

(2) The analysis must include the hydrologic and hydraulic calculations necessary to determine the impact of hydrograph timing modifications of the proposed development upon a dam, highway, structure, or natural point of restricted streamflow.

(3) The point of investigation is to be established, with the Department's concurrence, downstream of the first downstream tributary whose drainage area equals or exceeds the contributing area to the project or stormwater management facility.

(Ord. 02-367.)

§ 22-5. Contents of plan.

(a) *In general.*

The plan submitted for review and approval must contain supporting computations, drawings, and sufficient information to describe the manner, location, and type of measures in which stormwater runoff will be managed from the entire development.

(b) *Report and construction drawings.*

The plan must be accompanied by a report and construction drawings that include sufficient information to evaluate:

(1) the environmental characteristics of affected areas;

(2) the potential impacts of the proposed development on water resources; and

(3) the effectiveness and acceptability of measures proposed for managing stormwater runoff.

(c) *Waivers and variances.*

The plan must be accompanied by an application for any waiver or variance sought under Subtitle 23 or Subtitle 24.

(Ord. 02-367.)

§ 22-6. Report.

The report must contain the following, minimum information:

- (1) a brief narrative description of the project;
- (2) geotechnical investigations, including soil maps, borings, site specific recommendations, and any additional information necessary to evaluate the proposed stormwater management design;
- (3) descriptions of all water courses, impoundments, and wetlands on or adjacent to the site or into which stormwater directly flows;
- (4) hydrologic computations, including drainage area maps that show pre- development and post-development runoff flow path segmentation and land use;
- (5) hydraulic computations;
- (6) structural computations;
- (7) unified sizing criteria volume computations according to the Design Manual; and
- (8) any other information that the Department requires.

(Ord. 02-367.)

§ 22-7. Construction drawings.

(a) *In general.*

The construction drawings must include the following:

- (1) a vicinity map;
- (2) a topography survey that shows existing and proposed contours, including the area necessary to determine downstream analysis for proposed stormwater management facilities;
- (3) any proposed improvements, including the location of buildings or other structures, impervious surfaces, storm drainage facilities, and all grading;
- (4) the location of existing and proposed structures and utilities;

- (5) any easements and rights-of-way;
- (6) the delineation, if applicable, of:
 - (i) the 100-year floodplain; and
 - (ii) any on-site wetlands;
- (7) structural and construction details for all components of:
 - (i) the proposed drainage system or systems; and
 - (ii) stormwater management facilities;
- (8) all necessary construction specifications;
- (9) a sequence of construction;
- (10) dimensions of:
 - (i) total site area;
 - (ii) disturbed area;
 - (iii) new impervious area; and
 - (iv) total impervious area;
- (11) a table that shows the unified sizing criteria volumes required by the Design Manual;
- (12) a table of materials to be used for stormwater management facility planting;
- (13) all soil boring logs and locations;
- (14) a maintenance schedule;
- (15) a proposed construction and inspection schedule;
- (16) an as-built certification signature block, to be executed after the project is completed;
and
- (17) any other information that the Department requires.

(b) *Covenant of compliance.*

The developer must covenant on the drawings that all grading, drainage, construction, and development will be done in strict accordance with the plan.

(Ord. 02-367.)

§ 22-8. Preparation of plan.*(a) In general.*

A stormwater management plan must be prepared by a professional engineer, professional land surveyor, or landscape architect licensed in the State.

(b) Professional engineer only.

If best management practices require a dam safety permit from the Maryland Department of the Environment, the plan must be prepared by a professional engineer licensed in the State.

(Ord. 02-367.)

§ 22-9. Easements for runoff.*(a) Easement.*

If a stormwater management plan involves directing some or all runoff from the site, the developer is responsible for obtaining from adjacent property owners any needed easements or property interests for water flow.

(b) Plan creates no right.

Approval of a stormwater management plan does not create or affect any right to direct runoff onto adjacent property without that property owner's permission.

(Ord. 02-367.)

§ 22-10. Review and approval of plan.*(a) Review.*

The Department must review each proposed plan to determine its compliance with this Division II.

(b) Conditions.

In approving a plan, the Department may impose any conditions that it considers necessary or appropriate to:

- (1) ensure compliance with this Division II; and
- (2) preserve the public health and safety.

(c) Notification.

Within 30 days after it receives a completed stormwater management plan, the Department must notify the applicant of:

- (1) the Department's approval of the plan;
- (2) the Department's disapproval of the plan, together with:
 - (i) the reasons for disapproval; and
 - (ii) any modifications that the Department requires for approval; or
- (3) if no decision has yet been made:
 - (i) the status of the review process; and
 - (ii) the anticipated date of completion.
- (d) *Endorsement.*

A stormwater management plan is not valid until the plan has been endorsed and dated by the Department.

(Ord. 02-367.)

**SUBTITLE 23
WAIVERS****§ 23-1. Quantitative control waiver.**

The Department may grant a waiver of quantitative control requirements for a project if:

- (1) the project is within an area for which a watershed management plan has been developed under § 23-6 of this subtitle;
- (2) the project has a direct discharge to tidal waters or other tidal wetlands; or
- (3) the Department determines that circumstances exist that prevent the reasonable implementation of quantity control practices.

(Ord. 02-367.)

§ 23-2. Qualitative control waiver.

The Department may grant a waiver of qualitative control requirements for a project if:

- (1) the project is a development project for which stormwater management implementation is not feasible;
- (2) the project is a redevelopment project for which the requirements of § 23-7 of this subtitle are satisfied; or
- (3) the Department determines that circumstances exist that prevent the reasonable implementation of quality control practices.

(Ord. 02-367.)

§ 23-3. Conditions of waiver.

(a) *Case-by-case.*

A waiver may be granted only on a case-by-case basis, after considering the cumulative effects of the Department's waiver policy.

(b) *Impact.*

A waiver may be granted only if it reasonably ensures that the development will not adversely impact stream quality.

(c) *Fee in-lieu.*

The Department may require a person who is granted a waiver to pay a fee in-lieu-of on-site management.

(Ord. 02-367.)

§ 23-4. Application for waiver.**(a) *In general.***

The application for a waiver must:

- (1) be in the form that the Department requires;
- (2) contain the descriptions, drawings, and other information needed to evaluate the proposed waiver;
- (3) contain any other information that the Department requires; and
- (4) be submitted to the Department with the developer's proposed stormwater management plan.

(b) *Separate applications for additions, etc.*

A separate application is required for subsequent additions, extensions, or modifications to a development.

(Ord. 02-367.)

§ 23-5. {Reserved}**§ 23-6. Watershed management plan.****(a) *In general.***

- (1) The Department may develop a watershed management plan for the purpose of implementing different policies for waivers and redevelopment.
- (2) If the Department establishes a watershed management plan for a specific watershed, the Department may develop quantitative control waivers and redevelopment provisions that differ from § 23-1(2) and (3) and § 23-7.

(b) *Requisites.*

For this purpose, the watershed management plan must:

- (1) include detailed hydrologic and hydraulic analyses to determine hydrograph timing;
- (2) include an evaluation of both quantity and quality management;
- (3) include a cumulative impact assessment of watershed development;
- (4) identify existing flooding conditions and receiving stream channel conditions;
- (5) be prepared at a reasonable scale;

(6) specify where on-site or off-site quantitative and qualitative controls are to be implemented;

(7) be consistent with the General Performance Standards for Stormwater Management in Maryland, found in Section 1.2 of the Design Manual; and

(8) be approved by the State Water Management Administration.

(Ord. 02-367.)

§ 23-7. Redevelopment.

(a) *Waived requirements.*

Unless otherwise specified by the Department, a redevelopment project need not comply with requirements of the Design Manual for:

(1) recharge volume;

(2) channel protection storage volume; and

(3) overbank flood protection volume.

(b) *Applicable requirements – In general.*

(1) All redevelopment projects must reduce existing site impervious areas by at least 20%.

(2) If site conditions prevent the reduction of impervious area, then stormwater management practices must be implemented to provide qualitative control for at least 20% of the site's impervious area.

(3) If a combination of impervious area reduction and stormwater practice implementation is used, the combined area must equal or exceed 20% of the site.

(c) *Applicable requirements – Alternatives.*

If conditions prevent impervious area reduction or on-site stormwater management, practical alternatives may be considered, including:

(1) fees;

(2) off-site implementation of best management practices for a drainage area comparable in size and percent imperviousness to that of the project;

(3) watershed or stream restoration;

(4) retrofitting to improve water quality over current conditions by:

- (i) construction of structural best management practices in a previously developed area;
 - (ii) modification of existing structural best management practices ; or
 - (iii) implementation of a nonstructural practice; or
 - (5) other practices approved by the Department.
- (Ord. 02-367.)*

SUBTITLE 24
VARIANCES

§ 24-1. When authorized.

The Department may grant a variance from any requirement of this Division II if, because of exceptional circumstances applicable to the site, strict adherence to that requirement will result in unnecessary hardship and not fulfill the intent of this Division II.
(*Ord. 02-367.*)

§ 24-2. Application for variance.

The application for a variance must:

- (1) be in the form that the Department requires;
- (2) state the specific variance sought;
- (3) explain why the variance is needed;
- (4) contain any other information that the Department requires; and

(5) be submitted to the Department with the developer's proposed stormwater management plan.
(*Ord. 02-367.*)

§ 24-3. Justification required.

The Department may not grant a variance unless the applicant provides sufficient justification for the variance.
(*Ord. 02-367.*)

§ 24-4. Offset fee.

The Department may require a person who is granted a variance to pay an offset fee to the City.
(*Ord. 02-367.*)

SUBTITLE 25
PERMITS; FEES; SECURITY

§ 25-1. Approved plan prerequisite to permits.

(a) *Grading and building permits.*

For any development that requires a stormwater management plan under this Division II, a grading or building permit may not be issued unless a stormwater management plan has been approved by the Department.

(b) *Building permits.*

A building permit may not be issued without:

(1) recorded easements, as needed:

(i) for the stormwater management facility; and

(ii) to provide adequate access for inspection and maintenance from a public right-of-way;

(2) a recorded stormwater management maintenance agreement;

(3) a performance bond; and

(4) all necessary permissions from adjacent property owners.

(Ord. 02-367.)

§ 25-2. Fees.

(a) *In general.*

Non-refundable fees will be assessed and collected by the Department at the time the stormwater management plan is submitted.

(b) *Fee schedule.*

The fees assessed under this Division II:

(1) are in addition to the usual fees charged for grading or building permits; and

(2) shall be assessed for plan reviews, waivers, offsets, stormwater permits, inspections, fees in lieu, and the like, in accordance with the fee schedule established from time to time by the Board of Estimates.

(Ord. 02-367.)

§ 25-3. Performance security.**(a) *Required.***

For any development that requires a stormwater management plan under this Division II, a grading or building permit may not be issued until the applicant posts a surety or cash bond, irrevocable letter of credit, or other means of security acceptable to the Department.

(b) *Amount.*

The amount of the security may not be less than the total estimated construction cost of the stormwater management facility. This estimate must be prepared by the applicant and submitted with the plan.

(c) *Tenor.*

The security required by this section must provide for forfeiture on failure to:

- (1) complete all work specified in the approved stormwater management plan;
- (2) comply with any provision of this Division II or of any other applicable law or regulation; or
- (3) comply with any applicable time limitations.

(d) *Full release.*

The security may not be fully released until:

- (1) the Department conducts a final inspection of the completed work;
- (2) the developer submits “as-built” plans to the Department; and
- (3) the Department certifies that the stormwater management facilities:
 - (i) have been completed; and
 - (ii) comply with the approved plan and this Division II.

(e) *Partial release.*

- (1) The Department may establish a procedure for releasing the security in parts, prorated on completion and acceptance of the various stages of development and construction, as specifically delineated, described, and scheduled on the stormwater management plan.
- (2) This procedure must be established before approval of the stormwater management plan.

- (3) To obtain a partial release, the applicant must notify the Department, on completion of each stage, that the facility is ready for inspection.

(Ord. 02-367.)

§ 25-4. Permit suspension or revocation.

After written notice to the permit holder, the Department may suspend or revoke any grading or building permit for any of the following reasons:

- (1) any violation of the conditions of the stormwater management plan approval;
- (2) any change in the site runoff characteristics on which a plan or waiver was approved;
- (3) Construction not in accordance with the approved plan;
- (4) failure to comply with a correction notice or stop work order issued for the facility; or
- (5) a finding by the Department that an immediate danger exists in a downstream area.

(Ord. 02-367.)

**SUBTITLE 26
INSPECTIONS****§ 26-1. By whom conducted.**

All inspections under this Division II must be conducted by an authorized representative of the Department.
(Ord. 02-367.)

§ 26-2. Notices by developer.

The developer must notify the Department:

- (1) at least 48 hours before starting any work in conjunction with the stormwater management plan; and
 - (2) on completion of the project.
- (Ord. 02-367.)

§ 26-3. Inspections during construction.

(a) *In general.*

At a minimum, regular inspections must be made at the stages of construction specified in this section.

(b) *Ponds.*

For ponds:

- (1) On completion of excavation to sub-foundation and, when required, installation of structural supports or reinforcement for structures, including:
 - (i) core trenches for structural embankments;
 - (ii) inlet and outlet structures, anti-seep collars or diaphragms, and watertight connectors on pipes; and
 - (iii) trenches for enclosed storm drainage facilities;
- (2) during placement of structural fill or concrete and installation of piping and catch basins;
- (3) during backfill of foundations and trenches;
- (4) during embankment construction; and
- (5) on completion of final grading and establishment of permanent stabilization.

(c) *Wetlands.*

For wetlands:

- (1) at the stages specified in subsection (b) of this section for pond construction;
- (2) during and after wetland reservoir area planting; and
- (3) during the second growing season to verify a vegetation survival rate of at least 50%.

(d) *Infiltration trenches.*

For infiltration trenches:

- (1) during excavation to subgrade;
- (2) during placement and backfill of underdrain systems and observation wells;
- (3) during placement of geotextiles and all filter media;
- (4) during construction of appurtenant conveyance systems, such as diversion structures, pre-filters and filters, inlets, outlets, and flow distribution structures; and
- (5) on completion of final grading and establishment of permanent stabilization.

(e) *Infiltration basins.*

For infiltration basins:

- (1) at the stages specified in subsection (b) of this section for pond construction; and
- (2) during placement and backfill of underdrain systems.

(f) *Filtering systems.*

For filtering systems:

- (1) during excavation to subgrade;
- (2) during placement and backfill of underdrain systems;
- (3) during placement of geotextiles and all filter media;
- (4) during construction of appurtenant conveyance systems, such as flow diversion structures, pre-filters and filters, inlets, outlets, orifices, and flow distribution structures; and
- (5) on completion of final grading and establishment of permanent stabilization.

(g) *Open channel systems.*

For open channel systems:

- (1) during excavation to subgrade;
- (2) during placement and backfill of underdrain systems for dry swales;
- (3) during installation of diaphragms, check dams, or weirs; and
- (4) on completion of final grading and establishment of permanent stabilization.

(h) *Nonstructural practices.*

For nonstructural practices:

- (1) on completion of final grading;
- (2) on establishment of permanent stabilization; and
- (3) before issuance of use and occupancy approval.

(Ord. 02-367.)

§ 26-4. Inspection reports.

(a) *Reports required.*

Written reports must be made of all inspections conducted during construction.

(b) *Scope.*

Each inspection report must specify:

- (1) the date and location of the inspection;
- (2) whether the construction complies with the approved stormwater management plan;
- (3) any variations from the approved construction specifications;
- (4) any violations found; and
- (5) any other information that the Department requires.

(c) *Notice to developer.*

The Department must provide the developer with the results of each inspection report as soon as possible after the inspection.

(Ord. 02-367.)

§ 26-5. Work stoppage pending inspection.

At the completion of each construction stage for which an inspection is required, no further work may be done until the Department inspects and approves the work completed to date.
(Ord. 02-367.)

§ 26-6. Final inspection.

A final inspection must be conducted after construction is completed.
(Ord. 02-367.)

§ 26-7. As-built certification.

(a) *Required.*

Once construction is complete, the developer must submit to the Department an as-built plan certification by a professional engineer or professional land surveyor licensed in the State.

(b) *Tenor.*

The certification must certify that the completed stormwater management practices and conveyance systems comply with the specifications contained in the approved plan.

(c) *Contents.*

The certification must include:

(1) a set of drawings that compare the approved stormwater management plan with what has been constructed; and

(2) any other information that the Department requires.

(Ord. 02-367.)

§ 26-8. Notice to State Administration.

(a) *In general.*

For each stormwater management practice completed, the Department must submit a notice of construction to the State Water Management Administration.

(b) *When and how.*

The notice must be submitted:

(1) within 45 days of construction completion; and

(2) on the form that the Administration supplies.

(Ord. 02-367.)

SUBTITLE 27
MAINTENANCE

§ 27-1. Maintenance responsibility.

(a) *In general.*

The maintenance of private stormwater management facilities is the responsibility of:

- (1) the owner of the property; and
- (2) any other person in control of the property.

(b) *Scope of responsibility.*

The owner or other person in control must maintain in good condition and promptly repair and restore all:

- (1) grade surfaces, walls, drains, dams, and structures;
- (2) vegetation;
- (3) erosion and sediment control measures; and
- (4) other protective devices.

(c) *Compliance with plan.*

All maintenance, repairs, and restoration must be in accordance with the approved stormwater management plan.

(Ord. 02-367.)

§ 27-2. Maintenance schedule.

(a) *Required.*

A maintenance schedule must be developed for the life of every stormwater management facility.

(b) *Contents.*

The schedule must specify:

- (1) the maintenance to be completed;
- (2) the time for completing that maintenance; and
- (3) the person who will perform that maintenance.

(c) *Schedule to be part of approved plan.*

The maintenance schedule must be printed on the approved stormwater management plan.
(Ord. 02-367.)

§ 27-3. Maintenance agreement.

(a) *Prerequisite for permit.*

Before any grading or building permit may be issued for a private stormwater management facility, the owner must execute an inspection and maintenance agreement binding on all current and subsequent owners of land served by the facility.

(b) *Coverage.*

The agreement must provide for access to the facility, at all reasonable times, for regular inspections by the Department or its authorized representative to ensure that the facility is maintained in proper working condition to meet design standards.

(c) *Performance bond.*

- (1) A performance bond, with amount, terms, and provisions acceptable to the Department, must be provided.
- (2) The agreement must provide for forfeiture of the performance bond if, after written notice by the Department to correct any nonconformance with an approved plan, the owner fails to make satisfactory corrections within a reasonable time, not to exceed 30 days, unless extended for good cause shown.

(d) *Recordation.*

The owner must record the agreement in the land records of Baltimore City.
(Ord. 02-367.)

§ 27-4. Maintenance inspections.

(a) *Periodic inspections required.*

- (1) The Department must periodically inspect all stormwater management systems to ensure that preventative maintenance is being performed.
- (2) These inspections must be made:
 - (i) at least once during the 1st year of operation; and
 - (ii) at least once every 3 years following.

(b) *Inspection reports.*

(1) The Department must maintain inspection reports for all stormwater management systems.

(2) These inspection reports must include the following:

(i) the date of inspection;

(ii) the name of the inspector;

(iii) the condition of:

A. vegetation and filter media;

B. fences and other safety devices;

C. spillways, valves, and other control structures;

D. embankments, slopes, and safety benches;

E. reservoir and treatment areas;

F. inlet and outlet channels and structures;

G. underground drainage;

H. sediment and debris accumulation in storage and forebay areas;

I. any nonstructural practices to the extent practicable; and

J. any other item that could affect the proper function of the stormwater management system; and

(iv) a description of needed maintenance.

(Ord. 02-367.)

§ 27-5. Deficiencies.

(a) *Notice of deficiency.*

The department must promptly notify the owner of any deficiencies discovered from a maintenance inspection.

(b) *Owner to correct.*

The owner must correct the deficiencies:

(1) within 30 days of the notice; or

(2) by any other time to which the Department and the owner agree.

(c) *Reinspection.*

The Department must conduct a subsequent inspection to ensure completion of all required repairs.

(d) *Enforcement action.*

If repairs are not made or are not done properly, the Department may take any enforcement action authorized by law.

(e) *Immediate danger to health or safety.*

(1) If, because of an unsafe condition or improper maintenance, the stormwater management facility presents an immediate danger to the public health or safety, the Department may take whatever action is necessary to protect the public and make the facility safe.

(2) The Department may assess against the owner the costs incurred under this subsection.
(Ord. 02-367.)

SUBTITLE 28
ENFORCEMENT; REVIEWS; PENALTIES

§ 28-1. Violation notices.

(a) *Notice required.*

If a violation is found, the Department must provide written notice of the violation to:

- (1) the developer or owner; and
- (2) the on-site personnel.

(b) *Contents.*

A violation notice must describe:

- (1) the nature of the violation; and
- (2) the required corrective action.

(Ord. 02-367.)

§ 28-2. Enforcement of notice.

(a) *In general.*

The Department may take any one or a combination of the following actions to enforce a violation notice.

(b) *Stop work order.*

If a violation persists after issuance of a violation notice, the Department may issue a stop work order for the site.

(c) *Bond forfeiture; other action.*

If reasonable efforts to correct the violation have not been undertaken, the Department may:

- (1) cause the performance bond or other securities to be forfeited; and
- (2) refer the matter for legal action.

(d) *Civil fines.*

- (1) The Department may impose civil fines for minor infractions of this Division II.

- (2) A schedule of fines, not to exceed \$500 for any one offense, shall be established and may be amended from time to time by the Department with the approval of the Baltimore City Board of Estimates.

(Ord. 02-367.)

§§ 28-3 to 28-4. {Reserved}

§ 28-5. Administrative review – In general.

(a) *Right of appeal.*

Any person aggrieved by the action of any official charged with the enforcement of this Division II, whether as the result of the disapproval of an application, the issuance of a violation notice, an alleged failure to properly enforce this Division II, or otherwise, may appeal the action to the Director of Public Works.

(b) *When and how taken.*

The appeal must:

- (1) be in writing;
- (2) state clearly the grounds on which the appeal is based; and
- (3) be filed with the Director within 10 days of the action in dispute.

(Ord. 02-367.)

§ 28-6. Administrative review – Delegation of hearing authority.

(a) *In general.*

Hearings may be conducted by:

- (1) the Director of Public Works; or
- (2) a hearing officer designated by the Director.

(b) *Scope of delegation.*

The Director may delegate to a hearing officer the authority to issue:

- (1) proposed or final findings of fact;
- (2) proposed or final conclusions of law;
- (3) proposed or final findings of fact and conclusions of law;
- (4) proposed or final orders; or

(5) the final administrative decision of the Department.
(*Ord. 02-367.*)

§ 28-7. Administrative review – Conduct of hearing.

(a) *Notice.*

(1) The Director of Public Works must provide all parties reasonable written notice of the hearing.

(2) The notice must state:

(i) the date, time, place, and nature of the hearing;

(ii) the right of a party to be represented, at the party's own expense, by an attorney or, if permitted by law, other representative;

(iii) the right of a party to call witnesses and submit documents or other evidence under § 28-8 of this subtitle; and

(iv) that failure to appear for the scheduled hearing may result in an adverse action against the party.

(b) *Hearings to be open and informal.*

Except as otherwise provided by law or by rule or regulation of the Department, all hearings must be:

(1) open to the public; and

(2) conducted in an orderly but informal manner.

(*Ord. 02-367.*)

§ 28-8. Administrative review – Evidence.

(a) *In general.*

Except as otherwise provided by this section or by rule or regulation of the Department, formal rules of evidence and trial procedures do not apply.

(b) *Right to submit.*

On a genuine issue of fact, a party is entitled to:

(1) call witnesses;

(2) offer evidence, including rebuttal evidence;

(3) cross-examine any witness that another party or the Department calls; and

(4) present summation and argument.

(c) *Scope.*

The Director or hearing officer:

- (1) may admit probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs and give probative effect to that evidence;
- (2) may not exclude evidence solely on the basis that it is hearsay;
- (3) must give effect to a privilege recognized by law;
- (4) may receive documentary evidence in the form of copies or excerpts or through incorporation by reference;
- (5) may take official notice of a fact that is judicially noticeable or that is general, technical, or scientific and within the specialized knowledge of the Department; and
- (6) may exclude evidence that is:
 - (i) incompetent;
 - (ii) irrelevant;
 - (iii) immaterial; or
 - (iv) unduly repetitious.

(Ord. 02-367.)

§ 28-9. Administrative review – Final decisions.

(a) *Form and contents.*

A final decision must:

- (1) be in writing; and
- (2) contain separate statements of:
 - (i) the findings of fact;
 - (ii) the conclusions of law; and
 - (iii) the decision or order.

(b) *Distribution.*

A copy of the final decision must be mailed or delivered to each party or that party's attorney of record.
(Ord. 02-367.)

§ 28-10. {Reserved}

§ 28-11. Judicial review.

A party aggrieved by a final decision of the Department may appeal that decision to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Civil Procedure.
(Ord. 02-367.)

§ 28-12. {Reserved}

§ 28-13. Criminal penalties.

(a) *In general.*

Any person who violates any provision of this Division II or of any rule or regulation adopted under or incorporated into this Division II is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year or both fine and imprisonment for each violation.

(b) *Each day a separate offense.*

Each day that a violation continues is a separate offense.
(Ord. 02-367.)

SUBTITLES 29 TO 30
{RESERVED}

DIVISION III: SOIL EROSION AND SEDIMENT CONTROL**SUBTITLE 31
SOIL EROSION AND SEDIMENT CONTROL****§ 31-1. Notice to correct condition.**

If the Director of Public Works or his representative finds any area or property within the City of Baltimore in violation of Baltimore City's latest edition of its Erosion and Sediment Control Manual, the owner or owners of said areas or property shall be given notification to correct said condition in accordance with the recommendation of the Director of Public Works or his representative.

(City Code, 1976/83, art. 26, §115(1st sen.)) (Ord. 78-869.)

§ 31-2. Correction required.

The owner of said areas or property shall have 15 days from the date of written notification or a time specified by the Director of Public Works or his representative to correct the unsatisfactory condition in accordance with said recommendations.

(City Code, 1976/83, art. 26, §115(2nd sen.)) (Ord. 78-869.)

§ 31-3. {Reserved}**§ 31-4. Penalties.****(a) *In general.***

If the unsatisfactory condition is not corrected to comply with the Erosion and Sediment Control Manual, the owner of the property may be assessed a civil fine for each violation. Each day that an unsatisfactory condition continues uncorrected is a separate violation.

(b) *Fine Amount.*

The amount of the fine shall be in accordance with a schedule of fines, as established and from time to time amended by the Department of Public Works with the approval of the Board of Estimates. The maximum fine that may be imposed under the schedule of fines for any 1 violation is \$1,000.

(City Code, 1976/83, art. 26, §116.) (Ord. 78-869; Ord. 02-407.)

SUBTITLES 32 TO 40
{RESERVED}

DIVISION IV: FOREST AND TREE CONSERVATION**SUBTITLE 41
DEFINITIONS; GENERAL PROVISIONS****§ 41-1. Definitions.****(a) *In general.***

In this Division IV, the following terms have the meanings indicated.

(b) *Afforestation.*

“Afforestation” means:

- (1) the establishment of forest cover on an area from which it has always or very long been absent, or
- (2) the planting of open areas which are not presently in forest cover; and
- (3) establishment of a forest according to procedures set forth in the Baltimore City Forest Conservation Manual.

(c) *Baltimore City Forest Conservation Manual.*

“Baltimore City Forest Conservation Manual” (“Manual”) includes the State Forest Conservation Manual and the Baltimore City Forest Conservation Supplement to the State Forest Conservation Manual.

(d) *Clear.*

“Clear” means removal of any woody plant, wherein the stump and root mass are physically removed.

(e) *Cut.*

“Cut” means the removal of a woody plant, wherein the stump and root mass remain in place and intact.

(f) *Declaration of intent.*

“Declaration of intent” means a document whose purpose is to verify that the proposed activity is exempt under the provisions of the Natural Resources Article and this Division IV.

(g) *Department.*

“Department” means the Baltimore City Department of Planning.

(h) *Forest.*

“Forest” includes:

- (1) a biological community dominated by trees and other woody plants covering a land area of 4,000 square feet or greater. This area must have a live tree density of at least 100 trees per acre, with at least 50% of those trees having a 2-inch or greater diameter at 4.5 feet above the ground;
- (2) areas that have been cut, but not cleared; and
- (3) “forest” does not include orchards or Christmas tree plantations.

(i) *Forest conservation.*

“Forest conservation” means the retention of existing forest or the creation of new forest as prescribed by the Department of Planning and the Baltimore City Forest Conservation Manual.

(j) *Forest conservation plan.*

“Forest conservation plan” means a plan approved pursuant to Subtitles 42 and 44 of this Division IV and the requirements of the Baltimore City Forest Conservation Manual.

(k) *Forest stand delineation.*

“Forest stand delineation” means the description of the existing vegetation on a site proposed for development, prepared according to the requirements of the Baltimore City Forest Conservation Technical Manual and this Division IV.

(l) *Person.*

“Person” includes the federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

(m) *Reforest; reforestation.*

“Reforest” or “reforestation” means to create a biological community dominated by trees and other woody plants containing at least 100 trees per acre with at least 50% of those trees having the potential of attaining a 2-inch or greater diameter measured at 4.5 feet above the ground within 5 years and includes afforestation or establishment of a forest according to procedures set forth in the Baltimore City Forest Conservation Manual.

(n) *Regulated activity.*

“Regulated activity” means any activity subject to the requirements of § 42-1 of this Division IV.

(o) *Retention.*

“Retention” means the deliberate holding and protecting of existing trees, shrubs, or plants on the site according to established standards in the Baltimore City Forest Conservation Manual.

(p) *Tree.*

“Tree” means a large, woody plant having 1 or several self-supporting stems or trunks and numerous branches that reach a height of at least 20 feet at maturity.

(City Code, 1976/83, art. 9A, §1-1(a), (b), (d), (f) - (l), (p) - (s), (v).) (Ord. 93-170.)

§ 41-2. Statutory references.

Whenever a provision of this Division IV refers to any portion of the Maryland Code, the Code of Maryland Regulations {COMAR}, and the State Forest Conservation Manual, the reference applies to any subsequent amendment to that portion of the code, regulations, or manual unless the referring provision expressly provides otherwise.

(City Code, 1976/83, art. 9A, §1-2.) (Ord. 93-170.)

§ 41-3. Scope of Division — in general.

Except as provided in § 41-4 of this subtitle, this Division IV applies to:

- (1) any person making application for a grading or sediment and erosion control permit on a parcel of land 20,000 square feet or greater;
- (2) any person making application for a subdivision or development plan on a parcel of land greater than 20,000 square feet;
- (3) any person applying after January 1, 1993, for subdivision or site plan approval less than 5 years after the area has been cut; and
- (4) a public utility not exempt under § 41-4(b)(3) of this subtitle.

(City Code, 1976/83, art. 9A, §2-1.) (Ord. 93-170.)

§ 41-4. Scope of Division — exemptions.

(a) *Definitions.*

- (1) *Commercial logging or timber harvesting operations.*

“Commercial logging or timber harvesting operations” means those activities which result in the cutting and removing of tree stems from a site for commercial purposes, leaving the root mass intact.

(2) *Timber harvesting.*

- (i) “Timber harvesting” means a tree-cutting operation affecting 1 or more acres of forest or developed woodland within a 1-year interval that disturbs 5,000 square feet or more of forest floor.
- (ii) “Timber harvesting” does not include grubbing and clearing of root mass.

(b) *Exempted activities.*

This Division IV does not apply to:

- (1) any highway construction activity that is subject to State Natural Resources Article § 5-103;
- (2) commercial logging and timber harvesting operations, subject to the forest conservation and management program under State Tax-Property Article § 8-211:
 - (i) that were completed before July 1, 1991; or
 - (ii) were completed on or after July 1, 1991, on property which:
 - (A) is the subject of a declaration of intent signed by the land owner and approved by the Department of Public Works and the Maryland Department of Natural Resource’s Project Forester’s Office as provided in COMAR 08.19.01.05; and
 - (B) has not been the subject of an application for a grading permit for development within 5 years after a logging or timber harvesting operation, but after this 5-year period the property shall be subject to this Division IV;
- (3) the cutting or clearing of public utility rights-of-way or land for electric generating stations licensed under Article 78, §§ 54A, 54B, or 54-I of the Maryland Code if:
 - (i) required certificates of public convenience and necessity have been issued in accordance with State Natural Resources Article § 5-1603(f); and
 - (ii) the cutting or clearing of the forest is conducted so as to minimize the loss of forest;
- (4) routine maintenance or emergency repairs of public utility rights-of-way, if:
 - (i) the right-of-way existed before the effective date of the State or this program; or
 - (ii) the right-of-way’s initial construction was approved under this Division IV;

- (5) any noncoal surface mining regulated under Title 7, Subtitle 6A, of the State Natural Resources Article;
- (6) any preliminary plan of subdivision or any grading or sediment control plan approved before July 1, 1991;
- (7) areas covered by the Chesapeake Bay Critical Area Protection Law;
- (8) a real estate transfer to provide a security, leasehold, or other legal or equitable interest, including a transfer of title, a portion of a lot or parcel, if:
 - (i) the transfer does not involve a change in land use or new development or development, with associated land disturbing activities; and
 - (ii) both the grantor and grantee file a declaration of intent;
- (9) any activity conducted on a single lot of any size provided that the activity:
 - (i) does not result in the cumulative cutting or clearing of 20,000 square feet or greater of forest; and
 - (ii) does not include an application for a grading or sediment and erosion control permit for disturbance of 20,000 square feet or greater; or
- (10) an activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child or a grandchild of the owner, if the activity:
 - (i) does not result in the cumulative cutting or clearing of 20,000 square feet or greater of forest;
 - (ii) does not include an application for a grading or sediment and erosion control permit of 20,000 square feet or greater; and
 - (iii) is the subject of a declaration of intent filed with the Department pursuant to § 42-7 of this Division IV.

(City Code, 1976/83, art. 9A, §1-1(e), (t) and §2-2.) (Ord. 93-170.)

SUBTITLE 42
GENERAL REQUIREMENTS

§ 42-1. In general.

(a) *Required delineations, plans, and methods.*

Any person subject to this Division IV:

(1) shall submit to the Department:

- (i) a forest stand delineation for the property on which the development is located according to guidelines set forth in the Baltimore City Forest Conservation Manual and this Division IV; and
- (ii) a forest conservation plan for the property on which the development is located according to guidelines set forth in the Manual and this Division IV; and

(2) shall use methods provided in the Manual to protect retained forest and trees during construction.

(b) *City agencies using state funds.*

If a City agency using state funds makes application to conduct a regulated activity, the provisions of COMAR 08.19.04.01D - G apply.

(City Code, 1976/83, art. 9A, §3-1.) (Ord. 93-170.)

§ 42-2. Preparation of plans.

The forest stand delineation, the forest conservation plan, including preliminary and final plan, and the afforestation plan shall be prepared by a licensed forester, licensed landscape architect, or other qualified professional as provided in COMAR 08.19.06.01B.

(City Code, 1976/83, art. 9A, §3-2.) (Ord. 93-170.)

§ 42-3. Authorized signatory.

(a) *Who must sign.*

The forest stand delineation, preliminary and final forest conservation plans and afforestation/reforestation plans shall be signed by:

- (1) an officer of the corporation or an authorized agent of a corporation;
- (2) an authorized official of a federal, state, or local government;
- (3) a partner of an association or partnership; or
- (4) an individual applicant.

(b) *Responsibility of signatory.*

The individual who signs an application is responsible for the truth, accuracy, and completeness of all information in the application.

(City Code, 1976/83, art. 9A, §3-6.) (Ord. 93-170.)

§ 42-4. Review.

The Department shall review an application for a forest stand delineation, forestation and deforestation plans, and preliminary and final forest conservation plans to determine whether they are complete and correct, and shall acknowledge receipt of the application in writing by regular first class mail.

(City Code, 1976/83, art. 9A, §3-3.) (Ord. 93-170.)

§ 42-5. Completeness of application.

The Department shall consider a forest stand delineation, preliminary and final forest conservation plans, and afforestation plans complete if they contain all of the required information listed in the Baltimore City Forest Conservation Manual.

(City Code, 1976/83, art. 9A, §3-4.) (Ord. 93-170.)

§ 42-6. Notification of completeness.

(a) *To be given within 45 days.*

Within 45 calendar days after receipt of the forest stand delineation, the preliminary and final forest conservation plans, and the afforestation plan, the Department shall notify the applicant by mail whether the application is complete and correct or if additional information is required.

(b) *Effect of failure to notify.*

If the Department fails to notify the applicant within 45 days, any plan submitted shall be treated as complete and correct.

(c) *Additional information; extension of review.*

The Department may require further information or provide for an additional 15 calendar days for review of an application under extenuating circumstances.

(City Code, 1976/83, art. 9A, §3-5.) (Ord. 93-170.)

§ 42-7. Declaration of intent.

(a) *Required for exemption.*

A person seeking an exemption under § 41-4 of this Division IV shall file a declaration of intent with the Department.

(b) *Compliance with COMAR.*

The declaration of intent shall be as specified in COMAR 08.19.01.05.

(c) *Effective term.*

The declaration of intent is effective for 5 years.

(City Code, 1976/83, art. 9A, §3-7.) (Ord. 93-170.)

§ 42-8. Area subject to calculations.

If a person is applying for a grading or sediment and erosion control permit of an area between 20,000 square feet and 40,000 square feet in size, only the area of disturbance is subject to reforestation and afforestation calculations.

(City Code, 1976/83, art. 9A, §3-8.) (Ord. 93-170.)

SUBTITLE 43
FOREST STAND DELINEATION

§ 43-1. Time for submission.

(a) *In general.*

A forest stand delineation for the affected area shall be submitted:

- (1) at the initial stages of subdivision or site plan approval;
- (2) before a grading permit application is submitted; or
- (3) before a sediment and erosion control application is submitted.

(b) *Effect of failure to submit.*

If the forest stand delineation is not submitted at this time, no action will be taken on the application request.

(City Code, 1976/83, art. 9A, §4-1.) (Ord. 93-170.)

§ 43-2. Simplified delineation — when authorized.

A simplified forest stand delineation may be submitted for an area:

- (1) when no forest cover will be disturbed during any construction activity;
- (2) when an area is designated to be protected under a long term protective agreement;
- (3) when there is no existing forest on the site; or
- (4) when approved by the Department.

(City Code, 1976/83, art. 9A, §4-2.) (Ord. 93-170.)

§ 43-3. Simplified delineation — requirements.

The Department shall consider a simplified forest stand delineation complete if it includes:

- (1) a topographic map delineating intermittent and perennial streams and steep slopes over 25%;
- (2) a soils map;
- (3) location of 100-year floodplain; and
- (4) any other information necessary for the Department to review the application.

(City Code, 1976/83, art. 9A, §4-3.) (Ord. 93-170.)

§ 43-4. Effective term.

An approved forest stand delineation may remain in effect for a period not longer than 5 years.
(City Code, 1976/83, art. 9A, §4-4.) (Ord. 93-170.)

SUBTITLE 44
FOREST CONSERVATION PLAN

§ 44-1. Preliminary plan.

(a) *Concurrent review.*

The review of a preliminary forest conservation plan shall be concurrent with the review of the preliminary site plan.

(b) *Modifications.*

A preliminary forest conservation plan may be modified during the different stages of the review process, provided the Department approves the changes.

(City Code, 1976/83, art. 9A, §§5-1, 5-2.) (Ord. 93-170.)

§ 44-2. Retention of existing forest.

In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on the site. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Department how techniques for retention have been exhausted.

(City Code, 1976/83, art. 9A, §6-1.) (Ord. 93-170.)

§ 44-3. Revocation of plan — grounds.

The Department, its designee, or other responsible agency at the request of the Department, may revoke an approved forest conservation plan, including a reforestation and afforestation plan, if it finds that:

(1) any provision of the plan has been violated;

(2) approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact; or

(3) changes in the development or in the condition of the site necessitate preparation of a new or amended plan.

(City Code, 1976/83, art. 9A, §6-2.) (Ord. 93-170.)

§ 44-4. Revocation of plan — notice and hearing.

Prior to revoking approval of a forest conservation plan, the Department shall notify the owner and/or developer in writing and provide an opportunity for hearing before the Baltimore City Planning Commission.

(City Code, 1976/83, art. 9A, §6-3.) (Ord. 93-170.)

§ 44-5. Cutting prohibited pending approval.

If a forest conservation plan is required by this Division IV, a person shall not cut, clear, or grade on the development site until the Department has approved the plan.
(City Code, 1976/83, art. 9A, §6-4.) (Ord. 93-170.)

§ 44-6. Alteration of plan.

The plan cannot be altered without first obtaining approval from the Department.
(City Code, 1976/83, art. 9A, §6-5.) (Ord. 93-170.)

SUBTITLE 45
REFORESTATION AND AFFORESTATION

§ 45-1. Preference for retention.

After every reasonable effort to minimize the cutting of trees and other woody plants is exhausted in the development of a subdivision plan, and/or grading and sediment control plans, the forest conservation plan shall provide for reforestation or afforestation.
(*City Code, 1976/83, art. 9A, §7-1.*) (*Ord. 93-170.*)

§ 45-2. Required sequence.

(a) *Definitions.*

(1) *Off-site.*

“Off-site” means not on the same property as the activity which is proposed, is occurring, or which has occurred.

(2) *On-site.*

“On-site” means the area located within the legal boundary of the property on which the regulated activity is proposed, is occurring, or has occurred.

(b) *Sequence for reforestation, etc.*

The required sequence for reforestation or afforestation, after techniques for retaining existing forest on the site have been exhausted, is as follows:

(1) on-site reforestation or afforestation, as specified in the Baltimore City Forest Conservation Manual;

(2) off-site reforestation or afforestation within the City shall be as specified for on-site reforestation; and

(3) payment into the City Forest Conservation Fund.

(*City Code, 1976/83, art. 9A, §1-1(n), (o) and §7-2.*) (*Ord. 93-170.*)

§ 45-3. Reforestation, etc., guidelines; time limits.

(a) *Priority guidelines in Manual.*

Persons required to conduct reforestation or afforestation shall follow the priority guidelines outlined in the Baltimore City Forest Conservation Manual.

(b) *Period for reforestation, etc.*

A person required to conduct reforestation or afforestation under this Division IV shall accomplish the action within 1 year or 2 growing seasons following the issuance of a grading permit, allowing for phasing in the plan.

(City Code, 1976/83, art. 9A, §7-3.) (Ord. 93-170.)

§ 45-4. Security required.

A person required to conduct afforestation or reforestation under this Division IV shall furnish financial security in the form of a bond, an irrevocable letter of credit, or other security approved by the Department, as provided in the Baltimore City Conservation Supplement to the State Conservation Manual.

(City Code, 1976/83, art. 9A, §10-1.) (Ord. 93-170.)

SUBTITLE 46
FOREST CONSERVATION FUND

§ 46-1. Forest Conservation Fund established.

There is hereby created a Baltimore City Forest Conservation Fund.
(*City Code, 1976/83, art. 9A, §9-1.*) (*Ord. 93-170.*)

§ 46-2. When payments in lieu permitted.

If neither reforestation nor afforestation is possible, the applicant may make payment into the Forest Conservation Fund. Payment may be accepted into the Conservation Fund under the following circumstances:

(1) reforestation or afforestation on site is technically infeasible; and

(2) an acceptable reforestation or afforestation site cannot be found on other land within Baltimore City.

(*City Code, 1976/83, art. 9A, §8-1.*) (*Ord. 93-170.*)

§ 46-3. Contribution rate.

A person permitted by § 46-2 of this subtitle to contribute to this fund in lieu of reforestation or afforestation shall make a payment to the Baltimore City Conservation Fund of 30¢ per square foot of the area requiring planting.

(*City Code, 1976/83, art. 9A, §9-2.*) (*Ord. 93-170.*)

§ 46-4. When payable.

Money contributed in lieu of reforestation shall be paid at the time of the issuance of the grading permit for the development project.

(*City Code, 1976/83, art. 9A, §9-3.*) (*Ord. 93-170.*)

§ 46-5. Period for City reforestation, etc.

(a) *Period for City action.*

The City shall accomplish the reforestation or afforestation for which the money is deposited within 2 years or 3 growing seasons, as appropriate, after receipt of the money.

(b) *Refund.*

At the end of that time, any part that has not been used to meet the afforestation or reforestation requirements shall be returned to the person who provided the money.

(*City Code, 1976/83, art. 9A, §9-4.*) (*Ord. 93-170.*)

§ 46-6. Management of Fund.

(a) In general.

Money contributed under this title:

- (1) may be used only for reforestation, including site identification, acquisition, preparation, management, and maintenance;
- (2) shall be deposited in a separate Forest Conservation Fund; and
- (3) shall not revert to the General Fund.

(b) Site selection.

Sites selected for use of funds shall be located in the City of Baltimore.
(City Code, 1976/83, art. 9A, §9-5.) (Ord. 93-170.)

**SUBTITLE 47
VARIANCES****§ 47-1. “Variance” defined.**

“Variance” means the process of obtaining approval for a forest conservation plan that does not strictly conform to the standards and requirements set forth in this Division IV.
(*City Code, 1976/83, art. 9A, §9-5.*) (*Ord. 93-170.*)

§ 47-2. When authorized.

Variances from this Division IV may be granted by the Planning Commission, if the applicant demonstrates that enforcement would result in unwarranted hardship to the applicant.
(*City Code, 1976/83, art. 9A, §11-1.*) (*Ord. 93-170.*)

§ 47-3. Applications.

An applicant for a variance shall:

- (1) describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
- (3) verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;
- (4) verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;
- (5) verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and

(6) such other criteria that the Planning Commission may set by rule and regulation.
(*City Code, 1976/83, art. 9A, §11-2.*) (*Ord. 93-170.*)

SUBTITLE 48
ENFORCEMENT; PENALTIES

§ 48-1. HCD to enforce.

This Division IV may be enforced by the Department of Housing and Community Development in the manner provided in § 104 of the City Building Code.
(*City Code, 1976/83, art. 9A, §12-1(a).*) (*Ord. 93-170; Ord. 02-475.*)

§ 48-2. Fines.

(a) *Imposition.*

A person found to be in noncompliance with this Division IV, or the regulations adopted thereunder, the forest conservation plan, or the associated 2-year maintenance agreement, shall be fined a penalty of 60¢ per square foot of the area found to be in noncompliance with required forest conservation.

(b) *Use of funds.*

Money collected under subsection (a) of this section shall be deposited in the Forest Conservation Fund established by the Director of Finance, and may be used by the City for purposes related to implementing this Division IV.
(*City Code, 1976/83, art. 9A, §12-1(b), (c).*) (*Ord. 93-170.*)

§ 48-3. Civil penalties.

(a) *In general.*

In addition, any person who violates any provision of this Division IV or any regulation or order adopted or issued thereunder, is liable for a penalty not exceeding \$1,000 per violation, which may be recovered in a civil action brought by the City.

(b) *Each day a separate offense.*

Each day a violation continues is a separate violation.
(*City Code, 1976/83, art. 9A, §12-2.*) (*Ord. 93-170.*)

§ 48-4. Injunctions.

The Department may request the City Solicitor to seek an injunction requiring a person to cease violation of this title and to take corrective action to restore or reforest an area.
(*City Code, 1976/83, art. 9A, §12-3.*) (*Ord. 93-170.*)

SUBTITLES 49 TO 50
{RESERVED}

DIVISION V: CITY PARKS AND TREES

EDITOR' NOTE: Ordinance 03-501 (effective March 17, 2003) established a new "Department of Transportation" {Section 1} and transferred to this new Department, among other powers, duties, and programs, certain "programs budgeted under the Office of Transportation or the Department of Transportation" {Section 2(b)}. Among the programs transferred was "505 - Park and Street Trees".

**SUBTITLE 51
DEPARTMENT JURISDICTION**

§ 51-1. Cahill Recreation Center.

The Department of Recreation and Parks is hereby authorized and directed to assume and hereafter exercise, exclusively, control of the property formerly known as Mt. Holly Inn, and all lands adjacent thereto, and all appurtenances thereto, which property was conveyed by Winfield S. Cahill and wife to the Mayor and City Council of Baltimore on July 27, 1939, said property to be hereafter used for park purposes.

(City Code, 1950, art. 30, §1; 1966, art. 21, §1; 1976/83, art. 21, §1.) (Ord. 40-121.)

§ 51-2. Venable Park.

(a) Department jurisdiction.

The Department of Recreation and Parks is hereby authorized and directed to assume jurisdiction, for park purposes, over the following described part of Venable Park lying south of Thirty-Third Street:

Beginning for the same at the point formed by the intersection of the south side of Thirty-third Street as condemned and opened 120 feet wide under Ordinance No. 251, approved April 5, 1907, and the east side of Ellerslie Avenue as condemned and opened 66 feet wide under Ordinance No. 134, approved May 10, 1916, and running thence binding on the south side of said Thirty-third Street due East 489.81 feet, thence for lines of division, due South 568.50 feet to intersect the southeast side of Independence Street produced northeasterly, thence reversing said line so produced and binding thereon South 26°-32'-50" West 208.37 feet to intersect the southernmost outline of Venable Park as now surveyed, thence binding on said southernmost outline of Venable Park the two following courses and distances, namely, North 58°-41'-45" West 50.61 feet and North 62°-04'-22" West 498.71 feet to intersect the easternmost side of said Ellerslie Avenue and thence binding on the easternmost side of said Ellerslie Avenue the three following courses and distances, namely, North 26 °-32'-50" East 115.08 feet by a line curving to the left with a 339.12 foot radius the distance of 157.13 feet which arc is subtended by a chord bearing North 13°-16'-25" East 155.72 feet and due north 240.53 feet to the place of beginning.

The courses in the above description are all referred to the true meridian established by the City of Baltimore Topographical Survey Commission.

(b) *School Board jurisdiction.*

The Board of School Commissioners is hereby authorized and directed to assume jurisdiction, for school purposes, over all that part of Venable Park lying south of Thirty-Third Street not embraced in the piece or parcel of land described in subsection (a) hereof.

(City Code, 1950, art. 30, §§10, 11; 1966, art. 21, §§12, 13; 1976/83, art. 21, §§10, 11.) (Ord. 41-369.)

§ 51-3. Park Avenue Squares.

The City will:

(1) before July 1, 1897, plant with grass, trees, and shrubs, improve, and thereafter maintain the squares now laid out in the center of Park Avenue; and

(2) at all times thereafter, prevent their being overgrown with weeds or becoming unsightly.

(City Code, 1927, art. 29, §8; 1950, art. 30, §7; 1966, art. 21, §9; 1976/83, art. 21, §8.) (Ord. 1897-056.)

SUBTITLE 52
PROTECTIVE MEASURES

§ 52-1. Obstructions in parks and squares.

(a) *Prohibited conduct.*

No stand or obstruction to the public view shall be erected in any of the public parks or squares of the City or upon the footway belonging to any public building by any person or persons whomsoever (other than the Mayor and City Council of Baltimore).

(b) *Penalties.*

Anyone violating this section shall be fined \$50 for each offense.

(City Code, 1893, art. 37, §14; art. 46, §34; 1927, art. 29, §10; 1950, art. 30, §3; 1966, art. 21, §3; 1976/83, art. 21, §2.) (Ord. 1889-151.)

§ 52-2. Glass containers.

(a) *Prohibited conduct.*

Except as permitted by the Director of the Department of Recreation and Parks permits, a person shall not carry or possess any glass beverage container on any property under the control of the Department of Recreation and Parks.

(b) *Penalties.*

Any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$100.

(City Code, 1976/83, art. 19, §30A.) (Ord. 87-894.)

§ 52-3. Defacement, etc., of monuments.

(a) *Prohibited conduct.*

It shall be unlawful for any person to deface, injure, damage, or trespass upon any public or private monument, statue, or memorial, their ornamental figures or sculpture, or the enclosure or railing around them, or any of them, in the City of Baltimore.

(b) *Liability and penalties.*

(1) Any person violating the provisions of this section:

(i) shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than \$500 for each such violation; and

(ii) shall, in addition thereto, be liable to pay all expenses in repairing the said defacements, injuries, or damages.

- (2) In addition to a fine or in lieu of a fine, a judge may sentence a person convicted under this section to perform community service on behalf of the City of Baltimore, which may include cleaning property of trash and litter.

(City Code, 1879, art. 45, §1; 1893, art. 46, §1; 1927, art. 29, §23; 1950, art. 30, §4; 1966, art. 21, §5; 1976/83, art. 21, §4.) (Ord. 49-629; Ord. 91-664.)

§ 52-4. Mount Vernon Place — ornamental structures.

It shall not be lawful for any person to erect or set up any portico, steps, or any other ornamental structure whatever, on Mount Vernon Place, a greater distance into the place than 9 feet, measuring from the building line thereof.

(City Code, 1879, art. 45, §43; 1893, art. 46, §21; 1927, art. 29, §27; 1950, art. 30, §5; 1966, art. 21, §6; 1976/83, art. 21, §5.) (Rev. Ords. 1858-059.)

§ 52-5. Mount Vernon Place — injuring grass or shrubs.

(a) *Prohibited conduct.*

It shall not be lawful for any person or persons to walk upon or otherwise injure the grass, trees, or shrubbery upon the squares around Washington Monument, known as Mount Vernon Place and Washington Place.

(b) *Penalties.*

All persons guilty of violating this section shall be subject to a fine of \$1 for every offense; said fines to be collected as other fines and penalties are collected.

(City Code, 1893, art. 46, §23; 1927, art. 29, §28; 1950, art. 30, §6; 1966, art. 21, §7; 1976/83, art. 21, §6.) (Ord. 1882-50.)

§ 52-6. Battle Monument, etc.

(a) *Prohibited conduct.*

It shall not be lawful for any person or persons whomsoever, or for any body corporate, to deposit or cause to be deposited in the space around the Battle Monument, in Liberty Triangle, McLane Place, or Hopkins Place, any dirt, sand, stones, lumber, tools, or other material.

(b) *Penalties.*

Any person or persons or body corporate violating the provisions of this section, shall forfeit and pay:

- (1) the sum of \$10 for each and every offense; and

- (2) the additional sum of \$10 for each and every day that any article or articles deposited upon said space in violation of the provisions of this section shall remain thereon.

(City Code, 1893, art. 46, §36; 1927, art. 29, §31; 1950, art. 30, §8; 1966, art. 21, §10; 1976/83, art. 21, §9.) (Ord. 1892-032; Ord. 14-495.)

§ 52-7. Herring Run Park.**(a) *Prohibited conduct.***

- (1) It is unlawful any person to ride or permit a horse to be in any portion of Herring Run Park, other than on the bridle paths provided for such purpose.
- (2) It is unlawful for any person, firm, or corporation who or which owns or has control of a horse to turn over the animal to the custody of any person in the Park without instructions to keep the animal on the bridle paths as required in this section.

(b) *Penalties.*

A violation of the provisions of this section is a misdemeanor, subject upon conviction to a fine in a maximum amount of \$100.

(City Code, 1966, art. 21, §4; 1976/83, art. 21, §3.) (Ord. 59-1811.)

SUBTITLE 53
TREES ALONG CITY STREETS, ETC.

§ 53-1. Definitions.(a) *Person.*

The word “person”, whenever used in this subtitle, shall be construed to include individuals, firms, and corporations.

(b) *Tree.*

The word “trees”, as used in this subtitle, shall not be construed to include shrubs which do not grow higher than 15 feet.

(City Code, 1927, art. 45, §185; 1950, art. 35, §101; 1966, art. 26, §104; 1976/83, art. 26 § 109.) (Ord. 12-154; Ord. 46-396.)

§ 53-2. Jurisdiction of Department of Public Works.(a) *Regulating planting, etc.*

The Department of Public Works is hereby authorized and directed to regulate the planting, protection, regulating, and controlling of all trees planted and to be planted in the streets, lanes, or alleys of Baltimore.

(b) *Enforcing protective laws.*

The Department of Public Works shall cause all statutes and ordinances for the protection of trees in the streets, lanes, or alleys to be strictly observed.

(City Code, 1927, art. 45, §§174, 175(2nd par.); 1950, art. 35, §§91, 92(2nd par.); 1966, art. 26, §§94, 95(2nd par.); 1976/83, art. 26, §§101, 102(2nd par.)) (Ord. 12-154; Ord. 46-396; Ord. 76-139.)

§ 53-3. Jurisdiction of Department of Recreation and Parks.

It shall be the duty of the Director of Recreation and Parks:

(1) to encourage the preservation, culture, and planting of shade and ornamental trees in the streets, lanes, or alleys;

(2) to prune, spray, cultivate, and otherwise maintain such trees, plants, and shrubbery;

(3) to trim or direct the time and method of trimming the same; and

(4) to take such measures as may be deemed necessary for the control and extermination of insects and other pests and plant diseases which may injuriously affect trees that are now or may be hereafter in the streets, lanes, or alleys.

(City Code, 1927, art. 45, §175(1st par.); 1950, art. 35, §92(1st par.); 1966, art. 26, §95(1st par.); 1976/83, art. 26, §102(1st par.)) (Ord. 12-154; Ord. 46-396; Ord. 76-139.)

§ 53-4. Planting and care program.**(a) *Program mandated.***

The Department of Recreation and Parks shall initiate and maintain a program of planting and caring for trees along the streets, alleys, lanes, and other public ways and in parks, squares, and other public places of this City.

(b) *Scope and implementation.*

- (1) The program shall include at public expense the full cost of acquiring and planting the trees, including the cost of digging holes and preparing for the planting.
- (2) The size and scope of the program shall be determined from time to time by the amount of funds appropriated and authorized therefor.
- (3) It is the legislative intent that this program be vigorously implemented and pursued, and that a large and increasing number of trees be grown and preserved in and along all such public ways and public places in the entire City.

(c) *Spacing.*

Trees shall be planted and preserved at intervals of not more than 30 feet from the next contiguous tree or trees, except where requested by a property owner.

(d) *Species and varieties.*

Species and varieties shall be planted and preserved as most suitable for the particular area by means of availability, long life, full foliage and limb structure, beauty, and the specific request of property owners, except where the request of the property owner as to variety of the tree is not practicable in the opinion of the City Arborist.

(City Code, 1966, art. 26, §108; 1976/83, art. 26, §113.) (Ord. 65-434.)

§ 53-5. Public notice of tree removal.**(a) *Notice required.***

The Department of Recreation and Parks and the Department of Public Works shall not remove or destroy a tree along one of the streets, lanes, alleys, or other public ways in this City, unless notice of the intended removal or destruction is given.

(b) *Form and content.*

The notice:

- (1) shall consist of a durable and legible statement of the Department's intent, affixed to and easily visible on the tree for not less than 5 days immediately preceding the contemplated removal or destruction; and

(2) shall state:

- (i) the reason for the intended removal or destruction of the tree; and
- (ii) the person or persons to whom inquiries or protests thereon may be directed.

(c) *Exception for emergency.*

(1) In the event of an emergency situation, such as a fallen tree or some other condition or occurrence requiring an immediate removal or destruction of a tree along one of these public ways, the Department may remove or destroy the tree without complying with the foregoing provisions of this section.

(2) But in this event, the Department promptly shall notify the City Council of the circumstances, conditions, and justification under which the tree was thus removed or destroyed.

(City Code, 1966, art. 26, §107; 1976/83, art. 26, §112.) (Ord. 64-433.)

§§ 53-6 to 53-10. {Reserved}

§ 53-11. Permit requirements — planting trees.

(a) *Permit required.*

No person shall plant any tree in any street, lane, or alley without:

- (1) first having obtained a written permit therefor from the Department of Public Works, setting forth the conditions under which such trees may be planted, including the kind and variety thereof; and
- (2) in all respects complying with the conditions of such permit.

(b) *Court-ordered plantings.*

Any person determined by a court of competent jurisdiction to have unlawfully removed or destroyed a tree in any street, lane, or alley and required to replace the tree as directed by such court shall be granted a permit for its replacement as provided in this section.

(City Code, 1927, art. 35, §176; 1950, art. 35, §93; 1966, art. 26, §96; 1976/83, art. 26, §§103, 104A.) (Ord. 12-154; Ord. 46-396; Ord. 76-139; Ord. 90-576.)

§ 53-12. Permit requirements — treating trees.

(a) *Permit required.*

No person shall spray, mulch, fertilize, or otherwise treat, remove, destroy, break, cut, or trim any tree, or any part thereof, in any street, lane, or alley without first having obtained a written permit from the Department of Public Works.

(b) *Department to direct utilities, etc.*

And no cutting or trimming of any tree in any street, lane, or alley in connection with the work of any other City department or of any public service corporation or other person having a right to use said street, lane, or alley shall be done except in such manner as directed by the

Department of Public Works.

(City Code, 1927, art. 45, §177; 1950, art. 35, §94; 1966, art. 26, §97; 1976/83, art. 26, §104.) (Ord. 12-154; Ord. 46-396; Ord. 76-139.)

§ 53-13. Permit requirements — impeding roots.

No person shall, without first having received a written permit from the Director of Public Works, place or maintain upon the ground in any street, lane, or alley, any stone, cement, or other substance which shall impede the free entrance of water and air to the roots of any tree without leaving an open space of ground outside the trunk of said tree, in area not less than 16 square feet.

(City Code, 1927, art. 45, §181; 1950, art. 35, §99; 1966, art. 26, §102; 1976/83, art. 26, §107.) (Ord. 12-154; Ord. 46-396; Ord. 76-139; Ord. 77-310.)

§ 53-14. Permit requirements — time for completing work.

All work covered by a permit issued by the Department of Public Works under this subtitle shall be completed within 30 days from the date shown on the permit.

(City Code, 1927, art. 45, §184; 1950, art. 35, §100; 1966, art. 26, §103; 1976/83, art. 26, §108.) (Ord. 12-154; Ord. 46-396; Ord. 76-139.)

§§ 53-15 to 53-20. {Reserved}

§ 53-21. Injuring or defacing trees, etc.

(a) *Horses or other animals.*

No person shall fasten any horse or other animal to any tree or shrub in any street, lane, or alley, nor shall any person cause or permit any horse or other animal to stand or be near enough to any tree, plant, or shrub to bite or rub against it or in any manner injure or deface the same.

(b) *Attaching items.*

Nor shall any person attach or place any rope, wire, sign, poster, handbill, or other thing or substance on any tree or shrub in any street, lane, or alley or on any guard or protection of the same.

(c) *Injuring, etc., protective devices.*

Nor shall any person remove, injure, or misuse any guard or device placed or intended to protect any tree, plant, or shrub now or hereafter in any street, lane or alley.

(City Code, 1927, art. 45, §178; 1950, art. 35, §95; 1966, art. 26, §98; 1976/83, art. 26, §105.) (Ord. 12-154; Ord. 46-396.)

§ 53-22. Breaking or hurting trees, etc.**(a) *In general.***

If any person or persons shall willfully break, pull down, hurt, or destroy any tree or trees, or enclosure around the same, which are now or may hereafter be planted in any of the streets, lanes, or alleys of the City, or in any other public grounds within the City, such person or persons:

(1) shall be subject to a penalty as provided in § 53-26 of this subtitle; and

(2) may be required to replace any such tree or trees or enclosure around the same.

(b) *Exception.*

Provided always, that nothing herein contained shall be so construed as to prevent the Department of Recreation and Parks from removing any tree or trees, or part thereof, which he may deem so situated or in such condition as to render same unsafe or as to obstruct the footways or roadways.

(City Code, 1879, art. 47, §122; 1893, art. 48, §142; 1927, art. 32, §59; 1950, art. 35, §96; 1966, art. 26, §99; 1976/83, art. 26, §106.) (Ord. 50-1243; Ord. 76-139; Ord. 90-576.)

§ 53-23. Inconsistent ordinances.

All ordinances and parts of ordinances heretofore passed which are inconsistent with this subtitle, or any of its provisions, are hereby repealed to the extent of such inconsistency.

(City Code, 1927, art. 45, §186; 1950, art. 35, §102; 1966, art. 26, §105; 1976/83, art. 26, §110.) (Ord. 12-154; Ord. 46-396.)

§§ 53-24 to 53-25. {Reserved}**§ 53-26. Penalties.**

Any person violating any of the provisions of §§ 53-11, 53-12, 53-13, 53-21, or 53-22 of this article shall be subject to a penalty of not less than \$25 nor more than \$500, in the discretion of the Court.

(City Code, 1927, art. 45, §187; 1950, art. 35, §103; 1966, art. 26, §106; 1976/83, art. 26, §111.) (Ord. 12-154; Ord. 46-396; Ord. 76-139; Ord. 90-576.)

SUBTITLES 54 TO 60
{RESERVED}

DIVISION VI: MISCELLANEOUS**SUBTITLE 61
INACTIVE QUARRIES****§ 61-1. Fencing required.***(a) In general.*

All quarries which have been abandoned and are not actively operated shall be enclosed by a fence not less than 6 feet in height.

(b) Manner of construction and materials.

Said fence:

(1) to be constructed in such manner and of such materials as in the judgment of the Commissioner of Housing and Community Development will prevent any persons from entering upon the said quarry; and

(2) to be provided with a gate which shall be securely closed, except at such times when persons duly authorized persons are upon said premises.

(City Code, 1927, art. 32, §125; 1950, art. 24, §168; 1966, art. 19, §105; 1976/83, art. 19, §123.) (Ord. 24-231; Ord. 77-573.)

§ 61-2. Maintenance of fences.*(a) Maintenance required.*

Said fence shall at all times be kept in repair.

(b) Notice of noncompliance.

The Commissioner of Housing and Community Development is authorized and directed to immediately notify the owners, agents, or persons in possession of any such quarry to comply with the terms hereof.

(City Code, 1927, art. 32, §126; 1950, art. 24, §169; 1966, art. 19, §106; 1976/83, art. 19, §124.) (Ord. 24-231; Ord. 77-573.)

§ 61-3. Administrative enforcement.*(a) Commissioner to correct.*

Upon the failure of any such owners, agents, or persons in possession of any abandoned quarry to comply with the terms hereof within 10 days after being notified by the Commissioner of Housing and Community Development, the Commissioner shall forthwith enter upon the said premises and erect a fence or repair an existing fence, as the case may be.

(b) *Costs lien on property.*

The Commissioner is further directed to certify to the collector of taxes the costs of erecting such fence or of making such repairs which shall be a lien upon the property and shall be collected in the same manner as taxes.

(*City Code, 1927, art. 32, §127; 1950, art. 24, §170; 1966, art. 19, §107; 1976/83, art. 19, §125.*) (*Ord. 24-231; Ord. 77-573.*)

§ 61-4. Penalties.

Any owners, agents, or persons in possession of any such quarry who shall fail to comply with the terms of this subtitle within 10 days after being notified by the Commissioner of Housing and Community Development to fence any such quarry or repair an existing fence shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than 30 days or fined not more than \$100 or both, said fine or fines to be collected and disposed of as other fines.

(*City Code, 1927, art. 32, §128; 1950, art. 24, §171; 1966, art. 19, §108; 1976/83, art. 19, §126.*) (*Ord. 24-231; Ord. 77-573.*)